

(2023) 03 JH CK 0001

In the Jharkhand High Court

Case No : Writ Petition (C) No. 151 Of 2015

M/S National Printers, Proprietor Apex Products Private
Limited

APPELLANT

Vs

Principal Secretary And Others

RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 226
Interest On Delayed Payments To Small Scale And Ancillary Industrial Undertakings
Act, 1993 — Section 4, 5

Citation : (2023) 03 JH CK 0001

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

**Advocate : M.S. Mittal, Salona Mittal, Rahul Lamba, Anil Kr. Singh, Gautam
Kumar, Sachin Kumar, Krishna Murari, Richa Sanchita**

Final Decision : Disposed Of

Judgement

Sujit Narayan Prasad, J

1. The instant writ petition is under Article 226 of the Constitution of India seeking therein the following reliefs:

“(A) For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the order dated 05.06.2014 passed pursuant to order dated 31.03.2014 in WP(C) 798/2014 by the respondents whereby the respondent on one hand has categorically admitted that a sum of Rs.11,61,70,081/- due and payable to the petitioner and on the other hand has denied release of payment without assigning any cogent reason and only on basis of order no. 15/22012EE.XI dated 18.10.2013 passed by Respondent No.5 whereby and whereunder Respondent No.5 has allegedly ordered for stoppage of release of payment to petitioner.

(B) For issuance of an appropriate writ directing the respondents to bring on

record order no 15/22012EE.XI dated 18.10.2013 wherein respondent no.5 has unilaterally ordered for stoppage of release of payments related to printing of text books done by the petitioner and to quash the same and consequently order for release of the admitted dues of the petitioner.

(C) For issuance of an appropriate writ, order or direction upon the Respondents for making payment of compound interest (with monthly interests) @12% on the amount of Rs.11,61,70,081/- due to the petitioner from the date immediately following the date agreed upon under the provisions of Section 4 and 5 of "The Interest On Delayed Payments To Small Scale And Ancillary industrial Undertakings Act, 1993"

2. The brief facts of the case as per the pleading made in the writ petition which requires to be enumerated reads as under:

The tender dated 25.08.2012 (Annexure-1) for printing and supplying of text books, for Classes I to VIII was floated by the respondent No.1 Jharkhand Education Project Council, under the signature of Principal Secretary, Human Resource Development (HRD) Department-cum-State Project Director, JEPC, Ranchi.

The petitioner participated in the bidding process and submitted the requisite documents (Annexure-2) and gave his consent for printing and supplying of text books for Class VIII, at the lowest rate vide letter dated 24.09.2012 (Annexure-4). The contract was valued at Rs.16,62,79,595.29/-. The petitioner furnished the bank guarantee of Rs. 83,13,980/-, i.e., 5% of the amount as security, and the work order dated 25.09.2012, (Annexure-6), was issued in favour of the petitioner. The agreement/contract dated 25.09.2012 (Annexure-21) was executed and entered into by the petitioner and the respondents, consequent thereto, an advance amount of 30%, i.e., Rs.4,88,86,200/-of the contract value was released in favour of the petitioner vide Annexure-8. As per terms of the work order and contract the text books, of Package no.8 (i.e. for Class VIII), were to be delivered at the destination point within 145 days.

The petitioner completed the work for printing and supplying of the text books within the stipulated period and submitted the bills, dated 21.02.2013 (Annexure-9). The petitioner filed the representation dated 28.06.2013, requesting the respondents to release the remaining amount of Rs.11,61,70,081/-, but the respondents did not release the outstanding amount. Then, the petitioner filed W.P.(C) No. 798 of 2014 wherein this Court directed the respondent nos.3 and 4 to consider the petitioner's representation and pass a reasoned order within six weeks.

In view of the direction of the High Court in W.P.(C) No.798 of 2014 the petitioner submitted several representations, for releasing the outstanding amount, to the respondents (Annexure-13 series). In response to representations, the respondents, by letter dated 05.06.2014, rejected the claim of the petitioner on

the basis of the communication dated 18.10.2013 of the Ministry of Human Resources Development Department (for short 'MHRD'), Government of India (for short GOI) wherein it is mentioned that no expenditure for the procurement of text books should be incurred from the funds of the centrally sponsored scheme of SSA (Sarva Siksha Abhiyan).

The petitioner aggrieved from the letter dated 05.06.2014 filed the instant writ for redressal of his grievances. At the time of hearing of the instant writ the learned counsel for the petitioner contended that another similarly situated petitioner i.e. M/s. S. Dinesh and Co. had approached this Court in W.P.(C) No. 5568/2014 wherein by order dated 18.03.2016 (Annexure-19) the respondents have been directed to pay the outstanding amount to M/s. S. Dinesh and Co. It is further contended that the plea of the respondents that the payment can only be made on release of the fund by the Central Government is not in consonance with the terms and conditions of the contract/agreement dated 25.09.2012 (Annexure-21) and the order dated 05.06.2014, rejecting the claim of the petitioner is fit to be quashed.

On behalf of respondent no.4, i.e., the Principal Secretary, Ministry of Human Resources Development Department (MHRD), Government of India (GOI), it was contended that the agreement (Annexure-21) was entered into and executed on behalf of respondents no.1 and 2 and thus MHRD, GOI is not privy to the contract, hence MHRD, GOI is not liable and the respondent Nos. 1 to 3 are liable to make the payment from State's own resources. Another ground is taken that on account of allegations regarding the irregularities committed in the tender process in the matter of supply of materials under SSA scheme, for the academic session 2013-14 and taking account of the inquiry report, which was forwarded to MHRD by the State Government vide letter dated 25.09.2013, the MHRD directed the State Government not to make any payment from SSA funds or account and the decision of MHRD was communicated to respondent no. 1 by letter dated 18.10.2013 (Annexure-A to the counter affidavit filed by respondent no. 2 and Annexure-P/1 to the counter-affidavit of Union of India, respondent no.4.

On behalf of respondent no.2 Jharkhand Education Project Council (JEPC) it was contended that MHRD, GOI, by letter dated 18.10.2013 had directed that no expenditure for the procurement of text books should be incurred from the funds of the centrally sponsored scheme of SSA and despite repeated requests for release of the fund vide letter dated 03.08.2015 and 14.10.2015, respectively (Annexure-B and C of counter affidavit of respondent no.2), the MHRD did not accord the permission, hence the outstanding amount has not been paid to the petitioner.

It was further contended that JEPC is not a State within the meaning of Article 12 of the Constitution of India therefore, not amenable to the writ jurisdiction under Article 226, as such present writ is not maintainable. Respondent no.3 has adopted the argument propounded by respondent-JEPC.

3. The parties have appeared and the co-ordinate learned Single Judge had decided the writ petition vide order dated 19.09.2017, wherein, the Court has come to the conclusive finding as would appear from paragraphs-56, 57 and 58 that holding the writ petitioner entitled for payment of Rs.11,61,70,081/- on account of fault of the officials of the respondent/State as this would amount to penalizing the petitioner for no fault of his, especially when he has completed the work order in terms of the agreement and supplied the text books under the lawful agreement.

4. The co-ordinate learned Single Judge on the basis of such finding has been pleased to pass the order as under para-59 directing the respondent nos.1, 2 and 3 to arrange the payment of the admitted outstanding dues of Rs.11,61,70,081/- with interest @ 6% from the date it became due, within three months from the date of receipt/production of the order.

5. The Jharkhand Education Project Council, the respondent being aggrieved with the order passed by the co-ordinate Single Judge, preferred intra-court appeal being L.P.A. No.600 of 2017 and L.P.A. No. 03 of 2019 and the Division Bench of this Court has considered the issues after hearing the parties and came to the conclusive finding about admissibility of dues stands admitted by the JEPC. The Division Bench has also come to the finding that the State Government has also not denied the admissibility of the dues except that it has requested the MHRD, the Government of India to lift the prohibition for payment from SSA Fund. The Division Bench has also considered with respect to the issue of lifting the prohibition as imposed by the MHRD, Government of India. Such decision was taken by virtue of a restraintment order for release of the fund as contained in letter dated 18.10.2013.

The Division Bench has found it proper on the basis of the fact that the amount to be paid in favour of the petitioner since has been admitted by the JEPC as also by the State Government, as such, directed that 40% of the admitted dues which constitutes the State Government share, as per the Sarva Shiksha Abhiyan (SSA) Scheme, deposited under the Registry be released in favour of the petitioner. It has been observed therein that so far as the payment of remaining dues, the question of liability for payment between the Central Government and the State Government needs to be adjudicated upon by the learned writ court. As such, the Division Bench has remanded the matter on the aforesaid limited question of adjudication.

The Division Bench has further considered the issue of restraintment order passed by the MHRD, Government of India since is based upon the letter dated 18.10.2013, as such, liberty was granted to the petitioner to assail the aforesaid letter dated 18.10.2013 since according to the Division Bench, for determination of the question of liability, the legality and correctness of the letter dated 18.10.2013 issued by the MHRD, Government of India is necessary and moreover it formed the basis of withholding the payment of admissible dues to the petitioner by the State Project Director in the order dated 05.06.2014,

impugned in the writ petition.

The relevant paragraph of the judgment passed by the Division Bench of this Court as under para-20 and 21 requires to be referred herein, which read as under:

"20. However, we find that the admissibility of the dues stands admitted by the JEPC. The State Government has also not denied the admissibility of the dues except that it has requested the MHRD, GOI to lift the prohibition for payment from the SSA funds. The amount has been deposited as per the impugned direction in the Registry of this Court in pursuance of the contempt proceedings. The writ petitioner claims to be suffering recurring interest over the loans taken by it towards execution of the work. We therefore deem it fit and proper to direct that 40% of the admitted dues which constitutes the State Government's share as per the SSA Scheme, under deposit with the Registry, be released in favour of the writ petitioner. However, for payment of the remaining dues, we are of the considered opinion that the question of liability for payment between the Central Government and the State Government, needs to be adjudicated upon by the learned Writ Court. We do not agree with the submission of the writ petitioner that this issue has no connection with the payment of its entire admissible dues since it had entered into an agreement with the JEPC alone. The fact that the procurement of text books and supplies were made under the centrally sponsored scheme by the JEPC for the year 2013-14 cannot be brushed aside. We therefore remand the matter on this limited question of adjudging the liability of the State Government and the Central Government to the learned Writ Court. Since the letter dated 18th October 2013 is already on record and the petitioner had also made a prayer for calling it in order to lay challenge to it, we grant it liberty to specifically assail the letter dated 18th October 2013 before the Writ Court. In our view, for determination of question of liability, the legality and correctness of letter dated 18th October 2013 issued by the MHRD, GOI is necessary and moreover it formed the basis for withholding the payments of the admissible dues to the writ petitioner by the State Project Director in the order dated 5 th June 2014 impugned in the writ petition.

21. While directing as above, we consider it proper to deal with the rival pleas urged by the parties hereunder. On behalf of the appellant-JEPC, primarily the following grounds have been urged. That the writ petitioner has assailed only the consequential order dated 5th June 2014 passed by JEPC but not the order dated 18th October 2013 of the MHRD, GOI wherein the Central Government had restrained JEPC from making payments from the SSA fund to the Printer. However, for the reasons discussed above, we have thought it proper to remand the matter to the learned Writ Court on the limited question of adjudging the liability of the State Government and the Central Government. We have granted liberty to the writ petitioner to specifically assail the letter dated 18th October 2013 before the Writ Court since the question of liability between the two Governments is not divorced from the main relief prayed for by the writ

petitioner.”

Thereby, the writ petition so far as it relates to the adjudication of the liability in between the Central Government and the State Government is before this Court for its adjudication.

6. Mr. M.S. Mittal, learned senior counsel appearing for the petitioner has submitted that in pursuance of the liberty granted by the Division Bench of this Court, the letter dated 18.10.2013 has been challenged by filing interlocutory application being I.A. No. 7367 of 2019 which has been allowed vide order dated 14.02.2020.

7. The learned senior counsel has addressed the Court on the issue of legality and propriety of the decision as contained in letter dated 18.10.2013. It has been submitted that the very basis of issuance of the said decision is a complaint made by one Somnath Ghosh before the Central Vigilance Commission who earlier to making such complaint has approached this Court by filing public interest litigation being W.P.(PIL) No. 5779 of 2012 and a Division Bench of this Court vide order dated 09.10.2012 has dismissed the said writ petition. The said Somnath Ghosh, thereafter, has made a complaint before the Central Vigilance Commission, containing therein allegation dated 19.09.2012, on 22.03.2013.

8. On receipt of allegation dated 19.09.2012 by the Central Vigilance Commission, a report was called for from the Principal Secretary, Human Resources Development Department. Human Resources Development Department furnished a report giving therein parawise defence pertaining to four allegations contained therein. According to the learned senior counsel, first allegation has been levelled that Page 15, Clause 10.3 (h) of the bid documents provides inter- alia that authorized stockist/dealer must have had an annual average sale of 3000 MT paper over preceding two years (2010-11 and 2011-12) for printing of government text books/work books.

The State Government submitted its report stating therein that the clause regarding supply of paper from the authorised Stockist/Dealer existed since 2009-10 and the condition of annual average sale of 5000 MT was prescribed in the bid document for the year 2010-11 & 2011-12 and for the year 2012-13 & 2013-14 (processed in 2012) it was kept at 3000 MT.

But, the MHRD discarding the enquiry report furnished by the concerned department of the State of Jharkhand has prima facie believed that there was an intention to favour a particular stockist/dealer.

It has been contended that the main allegation is of annual average sale of 3000 MT have to be possessed by the authorized stockist/dealer and if such decision was taken by the State Government, where is the fault lying on the part of the petitioner since he has only participated for the printing of the books on the papers purchased by the petitioner from the government agencies, i.e., Hindustan Paper Corporation Limited and West Coast Paper Ltd., as such, the

petitioner cannot be said to be at fault if the paper having been manufactured from the government agency if purchased by the petitioner from the government agencies and the work has been completed by the petitioner and that is the reason the co-ordinate Bench of this Court has held the petitioner entitled for the entire amount and it is up to the State and the Central Government to decide regarding their liability.

9. The allegation no.2 pertains that Section VI of Technical Specification relating to paper required for printing of text book as amended by Corrigendum, Clause 10.3(h) of the bid documents provides the paper of these prescribed technical specifications must be procured from a Grade-1 paper mill having actual production capacity of at least 300 MT (three hundred metric tons) per day of white maplitho and cream wove paper (combined or separately) manufactured from 100% bamboo/wood virgin pulp out of which minimum 50000 MT paper should have been manufactured with watermark/logo of mill during preceding one year i e. 2011-12 and declaration to this effect is to be submitted duly certified by competent authority of concerned mill along with tender.

The State has submitted its report stating therein that that the original clause was "the paper of these prescribed technical specifications must be procured from a grade-1 paper mill having actual production capacity of at least 300 MT (three hundred metric tonnes per day) of white maplitho and cream wove paper (combined or separately) manufactured from 100% bamboo/wood virgin pulp". This original clause was modified after pre-bid meeting dated 04- 09-2012, on the clarification sought by the prospective bidders.

MHRD has taken the view that while the clause on watermark was available in the earlier bid documents, the clause relating to the Mills' capacity of manufacturing a minimum of 50000 MT paper with watermark/logo of the mill during the preceding one year was not available in any of the previous year's bid documents of JEPC.

10. The allegation no.3 pertains that the actual paper production capacity of the mill from which paper is proposed to be procured by the bidder should be at least three hundred (300) metric ton per day of white Maplitho Cream Wave paper manufactured from 100% bamboo/wood virgin pulps out of which minimum 50000 MT paper should have been manufactured with watermark/logo by that mill during preceding one year i.e., 2011-12.

The State has submitted its report stating therein that the original clause VI A (f) of bid document of 2013-14 was "the actual paper production capacity of the mill from which paper is proposed to be procured by the bidder should be at least three hundred (300) MT per day of white maplitho/Cream wove paper manufactured from 100% bamboo/wood virgin pulps. An Excise clearance certificate on the letter head clearly indicating the quality of text paper as required issued by the competent authority must be submitted for this purpose". This clause was modified after pre-bid meeting dated 04-09-2012, on the

clarification sought by the prospective bidders. In Para 4 of the State Report it has been stated that the specifications for paper and production capacity of the paper mill existed in the bid documents since 2005-06. In Para 5 of the state report it has been stated that there was a provision of pre-bid meeting of the prospective bidders with the JEPC as provided in the bid document and 25 prospective bidders participated and discussions were made. Only 10 prospective bidders submitted written suggestions. The corrigendum in the bid document was made in the light of discussion in the pre-bid meeting. The tender committee held meetings on 22.09.2012 and 24.09.2012 and the work order issued on 25.09.2012.

MHRD has taken the view that while the clause on watermark was available in the earlier bid documents, the clause relating to the Mills' capacity of manufacturing a minimum at 50000 MT paper with watermark/logo of the mill during the preceding one year was not available in any of the previous years' bid documents of JEPC.

11. The allegation no.4 pertains regarding exorbitant increase in cost of the textbooks over the years. In 2011-12, the bid value was approx. Rs.45 crore which had escalated to 67% amounting to approx. Rs.75 crore for the academic year 2012-13 just because of increase in paper cost which is absolutely illogical and quite shocking.

The State has submitted its report stating therein that 45 lakhs sets of text books printed in 2011-12 at the cost of Rs. 45.63 crore. For 2012-13 the same sets of books were printed at the cost of Rs. 75.99 crore and for the year 2013-14 (processed in 2012), 55 lakh sets of textbooks have been printed for Rs. 99.02 crore. The work order was issued to eight printers class-wise. In Para 6 of the State Report it is mentioned that a PIL No. 5779/2012 was filed in the Hon'ble Jharkhand High Court by the complainant which has been dismissed.

MHRD has taken the view that the State has not furnished any reasons for the abnormal increase in the cost of textbooks over the years. While an increase in cost of 10 to 15% is reasonable on account of escalation of cost of paper and other cost, 67% increase in a year is clearly on a higher side. However it is a reasonable assumption that the restrictive conditions as mentioned earlier might have lessened the competition and escalated the costs unreasonably.

12. The learned senior counsel, therefore, has taken the ground that the part of the order by which the petitioner has been held entitled for the entire amount as also been affirmed by the Division Bench of this Court and the same has also been declined to be interfered with by the Hon'ble Apex Court vide order dated 05.07.2019 in S.L.P. No.13651-13652 of 2019, hence, petitioner is entitled for the 60% of the share which is to be released by the Central Government.

Further submission has been made that the content of the letter dated 18.10.2013 basis upon which the Government of India is not releasing the fund of its share to the extent of 60% under the SSA Scheme, it is the concern of the

Central or the State Government and not of the petitioner.

13. Mr. Anil Kr. Singh, learned Additional Solicitor General of India appearing for the MHRD has not disputed the fact that the petitioner is entitled for the amount by taking into consideration the finding arrived at by the learned Single Judge regarding the entitlement of the petitioner of the amount in entirety which has been affirmed by the Division Bench of this Court and declined to be interfered with by the Hon'ble Apex Court but he has contended that since the irregularities has been committed by the State, as such, the decision has been taken by the MHRD not to disburse the share to the extent of 60% which is required to be disbursed under the Scheme of the Central Government in favour of the State Government.

Further submission has been made that since the State has committed gross irregularities in allotting tender, basis upon the complaint made by one Somnath Ghosh, decision has been taken by the concerned Ministry of the Union of India not to disburse its part of its share to the extent of 60% and as such, it is now the liability of the State Government to disburse the entire amount including the share which is to be disbursed by the Central Government.

It has been submitted that as per the scheme 60% share of the expenditure to be incurred in the SSA is to be borne by the Central Government but here, in the given facts of the case, the State since has not followed the requisite criteria to allot the work as would appear from the decision taken by the concerned authority of the Government of India as contained in letter dated 18.10.2013, therefore, the Central Government is not bound to extend the grant of 60% to be paid in favour of the petitioner rather since the State has committed irregularity, therefore, the State is to borne by making payment in favour of the petitioner. It has been submitted by referring to the reason assigned in the impugned letter dated 18.10.2013, whereby and whereunder, the authority has taken decision that the State Government in order to allot the work in favour of a particular agency, has reduced the quantum of quantity, therefore, same amounts to gross irregularity committed by the State and in that view of the matter, the Central Government is not bound to extend 60% of its share to be paid in favour of the petitioner.

14. Per contra, Mr. Sachin Kumar, learned AAG-II appearing for the State of Jharkhand has submitted that the argument which has been advanced on behalf of the learned Additional Solicitor General of India, the same is having no force reason being that the question of quantity of supply shown to have received from 5000 MT to 3000 MT or the white maplitho and cream wove paper manufactured from 100% bamboo/wood virgin pulp or the allegation about the actual paper production capacity or the allegation of exorbitant increase in cost of the textbooks over the years are concerned, the same cannot be said to be acceptable allegation, reason being that, it is the admitted case that the petitioner has purchased the paper for the purpose of printing from the manufacturer which is directly under the control of the Central Government being

the agency of the Central Government, as such, the State cannot out with the allegation as has been levelled in the impugned letter dated 18.10.2013, reason being that, if the said allegation is said to be acceptable then the question arises that what action has been taken by the Central Government against their own agency.

15. According to him, the decision as has been taken by the Central Government cannot be said to be sustainable in the eyes of law reason being that while taking such decision, the concerned competent authority of the Union of India has not considered the fact that this Court has already declined to interfere with the issue when the same had been agitated by the complainant by filing public interest litigation being W.P.(PIL) No. 5779 of 2012.

It has further been submitted that decision as contained in the letter impugned is mechanical and cryptic since there is no consideration of the view of the State Government and unilaterally the view which has been expressed by the Ministry of Human Resources Development Department, the same has been accepted without taking into consideration the fact that the paper which has been used for printing purposes was purchased by the petitioner from the Central Government agency.

Further submission has been made that the petitioner has participated in the process of the notice inviting tender and when declared successful, the work order has been issued in his favour and he has already executed the work, as such, as per the SSA Scheme, the concerned Ministry of the Central Government is liable to make payment of 60% of the amount as agreed in between the Central Government and the State Government, as such, now the ground which is being taken about the irregularity having been committed in allotment of the work as per the reason assigned in the letter dated 18.10.2013, the same cannot be said to be proper action on the part of the Central Government in withholding the 60% of his share to be paid in favour of the petitioner, more particularly, taking into consideration that the papers have been purchased from the Central Government agencies, i.e., Hindustan Paper Corporation Ltd. and West Coast Paper Ltd.

16. Mr. Krishna Murari, learned counsel for the JEPC has submitted that the allegation which has been levelled in the letter dated 18.10.2013 is no way concerned with the execution of the work performed by the petitioner since if the allegation has contained therein will be considered, the same pertains to the quality of paper but here, in the instant case, while taking into consideration the decision on the basis of the aforesaid allegations, the due consideration has not been given regarding the production capacity of the firm from where the paper was supplied. As such, the said order cannot be said to be proper and therefore, the said decision cannot be taken as a ground to not extend 60% of its share as is required to be allotted by the Central Government under the scheme.

17. We have heard the learned counsel for the parties, considered the rival

submissions as also the reason assigned in the impugned letter dated 18.10.2013 taken by the concerned Ministry of the Union of India. Since the matter is being heard by this Court on remand in order to adjudicate on the limited issue, i.e., to adjudge the liability of the Central Government and the State Government as also the legality and propriety of the decision taken by the Ministry of Human Resources Development Department as contained in the letter dated 18.10.2013.

18. This Court is now proceeding to examine both the issues.

The ground has been taken by the Ministry of MHRD, Government of India that the decision has been taken by the Central Government not to grant its aid of 60% of share in favour of the State Government due to the allegation levelled as per the decision taken as contained in letter dated 18.10.2013, therefore, the issue which is required to be decided first is regarding the legality and propriety of the impugned order reason being that if this Court will come to the conclusion that the allegation which has been levelled by the MHRD of the Union of India is not sustainable then share which has to be allotted by the Central Government to the extent of 60% as per the scheme is required to be allotted by the Central Government but if this Court comes to the conclusion that the decision which has been taken as contained in letter dated 18.10.2013 suffers from no illegality then what has been contended on behalf of the Central Government as per the decision so taken by the Central Government will require no interference.

19. The background of the decision so taken by the Central Government as contained in letter dated 18.10.2013 is a complaint made by one Somnath Ghosh alleging therein about commission of irregularities in the matter of allotment of work. The said Somnath Ghosh prior to making such complaint before the Central Vigilance Commission has approached to this Court by filing public interest litigation but the said public interest litigation had been dismissed by a Division Bench of this Court vide order dated 09.10.2012 and taking into consideration the fact that the grievance so agitated can be of the prospective bidders who can challenge the decision of the authorities with respect to prescribing of the conditions of the tender resulting into giving benefit to any of the manufacturers of paper. As such, the said public interest litigation was dismissed. For ready reference, the said order is beign referred as under:

"After going through the facts stated in the writ petition as well as after learned counsel for the parties, we are of the considered opinion that in case of any grievance can be, then that can be of the prospective bidders who can challenge the decision of the authorities with respect to prescribing of the conditions of the tender resulting into giving benefit to any of manufacturers of paper. We are, thus, not inclined to entertain this petition as Public Interest Litigation and as such, the same is dismissed."

20. The said Somnath Ghosh without assailing the said order before the higher forum had made a complaint before the Central Vigilance Commission leveling

allegations against the Government of Jharkhand on printing and supply of textbooks under the SSA Scheme for the academic year 2013-14 wherein the following allegations have been levelled.

“(I) Allegation No. 1:- Page 15, Clause 10.3 (h) of the bid documents provides inter- alia that authorized stockist/dealer must have had an annual average sale of 3000 MT paper over preceding two years (2010-11 and 2011-12) for printing of government text books/work books.

(II) Allegation No. 2: - Section VI of Technical Specification relating to paper required for printing of text book as amended by Corrigendum, Clause 10.3(h) of the bid documents provides the paper of these prescribed technical specifications must be procured from a Grade-1 paper mill having actual production capacity of at least 300 MT (three hundred metric tons) per day of white maplitho and cream wove paper (combined or separately) manufactured from 100% bamboo/wood virgin pulp out of which minimum 50000 MT paper should have been manufactured with watermark/logo of mill during preceding one year i e. 2011-12 and declaration to this effect is to be submitted duly certified by competent authority of concerned mill along with tender. Page 2 Point No.4 of Corrigendum

(III) Allegation No. 3: - The actual paper production capacity of the mill from which paper is proposed to be procured by the bidder should be at least three hundred (300) metric ton per day of white Maplitho Cream Wave paper manufactured from 100% bamboo/wood virgin pulps out of which minimum 50000 MT paper should have been manufactured with watermark/logo by that mill during preceding one year ie, 2011-12 Page 3 Point No.8 of Corrigendum.

(IV) Allegation No. 4:- Allegation on exorbitant increase in cost of the textbooks over the y years. In 2011-12, the bid value was approx. Rs.45 crore which had escalated to 67% amounting to approx. Rs.75 crore for the academic year 2012-13 just because of increase in paper cost which is absolutely illogical and quite shocking.”

21. The Central Vigilance Commission has referred the said complaint before the Human Resources Development Department of the Government of India. The concerned department has sought for a report from the State Government. The State Government has submitted its report allegation wise. It appears from the impugned letter dated 18.10.2013 that the Ministry of Human Resources Development Department has expressed its view, whereby and whereunder, the report furnished by the State Government has been discarded holding therein that the prima facie reason to relive that there was an intention to favour a particular stockiest/dealer basis upon which the conclusion has been arrived at that the serious irregularity has been committed by contravening the provision of the bid document.

It appears from the condition so made basis upon the para 115.5 of the Manual that as far as possible, the standards and technical specifications are to be

specified as per the generally accepted standards of technical specification should be prepared.

22. It is very surprising that the MHRD has come to the prima facie reason to believe that there was an intention to favour a particular stockist/dealer. The said prima facie opinion was based upon the condition stipulated under para 115.5 but there is no consideration by the concerned authority that how the aforesaid provision has been violated since merely reference of the condition stipulated under para 115.5 has been made without taking into consideration that how that condition has not been followed. Moreover, the standard and technical specifications which is required to be followed as per the specification referred under para 115.5, there is no reference as to how the said condition has not been followed in the facts of the given facts that the petitioner has only printed the books after purchasing it from the Central Government agency, i.e., Hindustan Paper Corporation Ltd. and West Coast Paper Ltd. So far as the Hindustan Paper Corporation Ltd. is concerned, the same is at the moment in the process of liquidation and the agency West Coast Paper Ltd. has not been examined as to whether the productive capacity of these companies are to of what extent since no enquiry to that effect has been conducted.

23. Further, even accepting the nature of allegation of reducing the annual average sale of 5000 MT to 3000 MT that is only applicable to the authorized stockist/dealer and herein, admittedly, the petitioner has only been awarded the work of printing, as such, the petitioner is nothing to do with the stock of paper or dealing in paper rather his work was only to print the textbooks after purchasing the paper from the authorized stockist/dealer.

24. It further appears from the report furnished by the State wherein it has been reported that clause regarding supply of paper from authorized stockist/dealer existed since 2009-10 and the condition of annual average sale of 5000 MT was prescribed in the bid document for the year 2010-11 & 2011-12 and for the year 2012-13 & 2013-14 (processed in 2012) it was kept at 3000 MT, but as would appear from the view of the MHRD, there is no consideration of the said aspect of the matter. Moreover, whatever condition has been made so far as the allegation no.1 is concerned, the same pertains to authorized stockist/dealer and the petitioner is not a stockist/dealer rather publisher of the books, therefore, such allegation even if committed for extending undue advantage to the stockist/dealer, the same will not come in the way of disbursing the money which is to be paid in favour of the petitioner.

25. Likewise, allegation no.2 which pertains to non-observance of the condition as under Section VI of the Technical Specification relating to paper required printing of text book is concerned, clause 10.3(h) of the bid document provides the paper of these prescribed technical specifications must be procured from a Grade-1 paper mill having actual production capacity of at least 300 MT (three hundred metric tons) per day of white maplitho and cream wove paper (combined or separately) manufactured from 100% bamboo/wood virgin pulp

out of which minimum 50000 MT paper should have been manufactured with watermark/logo of mill during preceding one year i e. 2011-12 and declaration to this effect is to be submitted duly certified by competent authority of concerned mill along with tender.

It appears from the report submitted by the State in this regard wherein the ground has been taken that the paper of these prescribed technical specifications must be procured from a grade-1 paper mill having actual production capacity of at least 300 MT (three hundred metric tonnes per day) of white maplitho and cream wove paper (combined or separately) manufactured from 100% bamboo/wood virgin pulp. This original clause was modified after pre-bid meeting dated 04.09.2012, on the clarification sought by the prospective bidders, but, that aspect of the matter has not been taken into consideration as would appear from the MHRD view wherein it has been stated that while the clause on watermark was available in the earlier bid documents, the clause relating to the Mills capacity of manufacturing a minimum of 50000 MT paper with watermark/logo of the mill during the preceding one year was not available in any of the previous year's bid documents of JEPC.

The concerned authority of the MHRD, Union of India has taken note of para 3.2 of the SSA manual on Financial Management and Procurement which provides that the procurement system should consider economy, efficiency, transparency and equal opportunities for all. Inclusion of any clause which is going to diminish the competition and affect fair and equitable treatment of bidders is restrictive and not tenable in public procurement, even though it was suggested during pre-bid meeting. The concerned authority, therefore, has come to conclusion that the prescribing actual production capacity of 300 MT per day and a minimum of 50000 MT paper with watermark/logo of the mill during preceding one year is restrictive and is a financial impropriety.

It is, thus, evident that this allegation also pertains to the productive capacity of the manufacturer and herein, the petitioner is not at all concerned with the purchase of the paper rather with the printing.

26. So far as the question of specification or the productive capacity is concerned, the concerned authority of the MHRD, Union of India has not considered important aspect of the matter as to whether the manufacturer from where the paper was purchased is having no productive capacity of either 300 MT per day and a minimum of 50000 MT with watermark/logo of the mill during preceding one year.

27. Likewise, allegation no.3 which pertains to the actual paper production capacity of the mill from which paper is proposed to be procured by the bidder should be at least three hundred (300) metric ton per day of white Maplitho Cream Wave paper manufactured from 100% bamboo/wood virgin pulps out of which minimum 50000 MT paper should have been manufactured with watermark/logo by that mill during preceding one year ie, 2011-12, Page 3 Point

No.8 of Corrigendum.

The State has submitted its report stating that the actual paper production capacity of the mill from which paper is proposed to be procured by the bidder should be at least three hundred (300) MT per day of white maplitho/Cream wave paper manufactured from 100% bamboo/wood virgin pulps An Excise clearance certificate on the letterhead clearly indicating the quality of text paper as required Issued by the competent authority must be submitted for this purpose". This clause was modified after pre-bid meeting dated 04.09.2012, on the clarification sought by the prospective bidders.

As would appear from MHRD view that the fact about the modification of the clause as under VI A (f) of the bid document of 2013-14 has not been disputed but even then the decision has been taken finding the aforesaid allegation to be correct.

28. Allegation no.4 which pertains to exorbitant increase in cost of the textbooks over the years.

The State has submitted its report wherein it has been stated that 45 lakhs sets of text books printed in 2011-12 at the cost of Rs. 45.63 crore. For 2012-13 the same sets of books were printed at the cost of Rs. 75.99 crore and for the year 2013-14 (processed in 2012), 55 lakh sets of textbooks have been printed for Rs. 99.02 crore. The work order was issued to eight printers class-wise. At Para-6 of the State Report it is mentioned that a PIL No. 5779/2012 was filed before the High Court by the complainant which was dismissed.

It appears from the MHRD view that the aforesaid view furnished by the State has been discarded for the reason that the State has not furnished any reason for the abnormal increase in the cost of textbooks over the years. While an increase in cost of 10 to 15% is reasonable on account of escalation of cost of paper and other cost, but 67% increase in a year is clearly on a higher side. However it is a reasonable assumption that the restrictive conditions as mentioned earlier might have lessened the competition and escalated the costs unreasonably.

It is, thus, evident from the consideration being made by the authority concerned while not accepting the view of the State regarding the escalation of the cost but the issue of escalation of cost cannot be said to be within the purview of the bid document rather it is post-facto consideration of cost to be realized incurred in the printing of books.

29. This Court, apart from the aforesaid reason, has also considered the plea having been advanced on behalf of the petitioner, State of Jharkhand and JEPC that the petitioner since has purchased the paper for printing of books from the Central Government Agency and the production capacity and repute of the manufacturer/stockist/dealer has not been examined and merely has gone into the condition of tender which cannot be said to be justifiable action on the part of

the Central Government.

30. This Court has considered the submission and has found from the material available on record that the State Government has floated a notice inviting tender as annexed as annexure-1 to the paperbook notified by the Jharkhand Educational Project Council for printing and supplying of textbooks for Class I-VIII for the academic session 2013-14. It appears from the said notice inviting tender that a pre bid meeting was decided to be held on 04.09.2012 requiring the intending bidders or their authorized representatives to attend the meeting. Notice inviting tender, therefore, only invites application for printing and supplying of textbooks.

31. It requires to refer herein that under the SSA Scheme the Central Government and the State Government have agreed to launch this Scheme on the ratio of 60:40 as per the facts of the given case. The share is to be given by the Central Government by way of aid or grant to the State Government in order to universalize the elementary education.

32. It also requires to refer herein the framework for implementation of SSA Scheme. The financial norms have also been decided which reflects that the assistance under the programme of SSA will be on certain ratio to be share in between the Central Government and the State Government. The State Government will have to maintain their level of investment in elementary education. The contribution as State share for SSA will be over and above this investment. The Government of India would release funds to the State Government/Union Territories only and installments would only be released after the previous installments of the Central Government and the State share has been transferred to the State Implementation Society.

33. It is, thus, evident from the framework of the SSA Scheme that the Central Government is no way to interfere with the internal activities of the State Government so far as the implementation of the scheme is concerned, save and except, the funds is to be released to the State/Union Territories only and installment (except first) would only be released after the previous installments of the Central Government and the State share has been transferred to the State Implementation Society, meaning thereby, merely because the Central Government is sharing the cost incurred in implementing the scheme, has not been conferred with the power to interfere with the internal mechanism of the State Government.

Here, in the facts of the given case, it is not a case of the Central Government that the State Government without issuing notice inviting tender, the work was allotted in the favour of the petitioner. It is also not the case of the Central Government that the petitioner has purchased the material from the agencies which have not been earmarked to supply the papers. It is also not the case of the Central Government that the printing work which has been concluded on the papers is having any sub-standard material. It is also not the case of the Central

Government that the embezzlement of money has been taken place since the office of the Accountant General has also conducted the audit and it has not been found by the audit team any irregularity as would be evident from the affidavit filed on behalf of the Office of the Accountant General on being called upon by this Court vide order dated 17.11.2022.

34. The Central Government merely on the basis of the vague allegation made by one Somnath Ghosh before the Central Vigilance Commission and in complete disregard to the State Government enquiry report and without taking into consideration the fact that the conditions have been modified on pre-bid meeting held on 04.09.2012 as would appear from the reference to that effect made in the letter dated 18.10.2013 under the report submitted by the State.

35. It further does not appear from the decision taken by the Central Government in the impugned letter that there is due consideration of the fact that the paper upon which the printing work has been completed was purchased from the Government Agencies.

36. This Court has posed a pin pointed question upon the learned Additional Solicitor General of India that is it the case of the Central Government that the production of paper which was carried out by the Government Agency was having any sub-standard material.

Learned ASGI has submitted that since the agency is of the Central Government, there cannot be any allegation to that effect.

37. So far as the other agency, i.e., West Coast Paper Ltd. is concerned, there is no enquiry to that effect, as such, it is incorrect on the part of the concerned Ministry of the Central Government to take the plea of commission of irregularity on behalf of the State.

Further, when the scheme does not provide to show interference by the Central Government merely because 60% of the share is to be given by it, it is not available for the Central Government to interfere with the internal affairs of the State Government otherwise the same will hit the very federal principle of the system of Government. Moreover, the constitutional body, i.e., Comptroller and Auditor General has also conducted an audit and has not reported about embezzlement or omission or commission of public money in connection with the issue.

38. This Court, therefore, is of the view that the decision of the Central Government as contained in letter dated 18.10.2013 showing interference with the internal affairs of the State Government, cannot be said to be justified and further on its merit, on the basis of the reason referred hereinabove, the same cannot be said to be decision based upon the justification.

39. Accordingly, the letter dated 18.10.2013 is hereby, quashed and set aside.

40. In consequence thereof, 60% of the share of the Central Government as per

the SSA Scheme is to be released by the Central Government.

41. Accordingly, the reference as per the direction passed by the Division Bench of this Court is answered.

42. In view thereof, the writ petition is disposed of.

43. Pending interlocutory application(s), if any, also stands disposed of.