

(2003) 08 GAU CK 0018

In the Gauhati High Court

Case No : W.A. No. 462 of 2001 etc. etc.

North Eastern Electric Power Corporation Limited

APPELLANT

Vs

Khoda Talley and Others

RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Constitution of India, 1950 — Article 299
Contract Act, 1872 — Section 10

Citation : AIR 2004 Guw 171 : (2005) 1 CTLJ 476

Hon'ble Judges : P.P. Naolekar, C.J.;Aftab H. Saikia, J

Bench : Division Bench

Advocate : M.Z. Ahmed and B. Dutta, for the Appellant; B. Banerjee, G.A. Arunachal Pradesh, C. Baruah, S.C. Biswas, Robin Dutta and M.K. Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Since this batch of writ appeals carries common question of law based on similar and identical question of facts the same is taken up together for hearing and being disposed of finally by this common judgment and order.

2. We have heard Mr. M.Z. Ahmed, learned counsel appearing for the appellant and Mr. B. Banerjee, learned Sr. Govt. Advocate, Arunachal Pradesh and Mr. C. Baruah, learned Sr. counsel assisted by Mr. R. Saikia learned counsel appearing for the private respondents at length.

3. The imposition of financial liabilities upon the appellant-North Eastern Electrical Power Corporation Ltd. (for short "NEEPCO") jointly with the State of Arunachal Pradesh and the Public Works Department to the Govt. of Arunachal Pradesh (hereinafter referred to as "the P.W. Department") by the learned single Judge in rendering the related impugned Judgments and orders for payment of outstanding contractors' bills accrued to the contractors/private respondents for execution of the contract works so allotted to them by the P.W. Department for construction of Doimukh-Hoj road required for ongoing 405 M.W. Ranganadi

Hydro Electric Project (for short, "the Project") undertaken by NEEPCO, is the subject matter for adjudication in this host of writ appeals.

4. The case of the writ petitioners is that the works order were issued by the State/Respondents through the Executive Engineer, P.W.D. and the same was duly, satisfactorily and completely executed in time and the items supplied by the writ petitioners/Respondents pursuant to the works orders were utilized by the P.W. Department for construction of the road. Thus the amount for such execution of works/materials supplied was due from the State Govt. which has not been paid to them. The State respondents have admitted the amount claimed but have contended that because of internal arrangements and the nature of transaction between the State and the NEEPCO, the liability to pay the amount is that of NEEPCO and not that of the State of Arunachal Pradesh. The learned single Judge allowed the writ petitions directing the payment of the amount by both the State of Arunachal Pradesh as well as NEEPCO. Aggrieved by the said direction of the learned single Judge, NEEPCO filed this batch of writ appeals.

5. It is pleaded by NEEPCO that the funds required for construction of the Doimukh-Hoj road as referred above, was made available by the North Eastern Council (for short, "N.E.C.") and the same was only channelised through NEEPCO. Since the contract in question was for and on behalf of NEEPCO for its Project, initially the said road was sought to be constructed by NEEPCO itself from the fund made available to it by N.E.C., but due to the objection raised by the local people it was ultimately decided between N.E.C., NEEPCO and the State of Arunachal Pradesh that the construction work of the said road would be entrusted with the P.W. Department as "deposit work" and accordingly it was agreed that the P.W. Department would complete the said road by engaging local contractors within a total cost of Rs. 12 crores fixed by N.E.C. As a result NEEPCO handed over the entire work of construction of the said road along with fund mentioned above to the P.W. Department. Unfortunately the P.W. Department failed to have the work executed within the stipulated time and instead submitted a revised estimate of over Rs. 19 crores for completion of the said works. N.E.C. rejected such prayer of the P.W. Department and decided to have balance work completed either through NEEPCO or some other agency and eventually the said balance work was allotted to Border Road Task Force (for short "the BRTF"). Meanwhile, the P.W. Department was directed not to proceed further with the works from April, 1997 and accordingly after various deliberation between the P.W. Department and NEEPCO, the road finally stood transferred to NEEPCO w.e.f. 11-8-97. According to NEEPCO, despite such direction to the P.W. Department not to proceed with the work from April, 1997, the P.W. Department went on awarding various works to the contractors after such period. Even upon withdrawal of such works from the P.W. Department, NEEPCO failed to receive back the records of the works executed by the P.W. Department through its contractors including details of the utilization of the fund so made available to the P.W. Department as already noticed above. Therefore since the entire work of

construction of the said road was "deposit work" being awarded to the P.W. Department by the NEEPCO on behalf of the NEC, NEEPCO had no control whatsoever over the said work executed by the private contractors on being engaged by the P.W. Department itself except for handing over the fund to the P.W. Department and accordingly NEEPCO cannot be held liable for payment of any outstanding amount to be paid to the contractors engaged by the P.W. Department for execution of the contract works more particularly when works were awarded from and after April, 1997.

6. Mr. M.Z. Ahmed, learned counsel appearing for the NEEPCO has strenuously contended that the learned single Judge committed grave error of law as well as facts in fixing the liabilities for the payment of the outstanding undisputed contractors' bills upon NEEPCO inasmuch as no adequate opportunity of hearing was ever afforded to NEEPCO to defend its case at the time of disposal of the related writ petitions for which the factual situation as noted above could not be brought to the notice of the learned single Judge. That apart, NEEPCO had already deposited the sanctioned amount to the P.W. Department till the end of March, 1997 and the detailed expenditure of the same has not yet been given to the NEEPCO. As such the State/Respondents are the only authorities to make the payment of those outstanding undisputed contractors' bills to the exclusion of NEEPCO and accordingly they are alone required to be saddled with the liability for such payment. Thus it is submitted that on consideration of such express factual situation of the case, NEEPCO may be relieved from its financial burden of payment of contractors bills as fixed by the learned single Judge.

7. Supporting the impugned judgments, Mr. Banerjee, learned State counsel has vehemently urged that since the construction of the entire road has been handed over to NEEPCO with effect from 31-10-97 and not 11-8-97 as claimed by NEEPCO the State Govt. is not liable for any payment of those contractors' bills which were admittedly undisputed and NEEPCO is duty bound to clear the entire outstanding contractors' bills.

8. We have given our anxious consideration to the forceful submissions of the learned counsel of the rival parties and have also meticulously perused the materials available on record including the impugned judgments and pleadings of the parties. On close inspection of those aforesaid materials available on record, it is seen that admittedly the contractors' -- writ petitioners/private respondents were duly allotted the contract works in question by P.W. Department and such works were also duly executed by them. De execution and completion of those works were also approved by the P.W. Department. Further the related bills submitted by the contractors -- writ petitioners were also found to be beyond controversy by the department concerned. Thus it appears that the entire contract of construction of road in question was between the writ petitioners/private respondents and the state -- Respondents and concededly NEEPCO never entered into any contract with the writ petitioners. That being so, since there was no privity of contract between the NEEPCO and the contractors-writ petitioners/

private respondents, NEEPCO cannot be held to be liable for any payment of those outstanding undisputed bills to the writ petitioners/private respondents in the writ petitions filed by the contractors claiming the amount outstanding under the contract executed by the State. We are not required to consider or decide the question of inter se responsibility between the State and the NEEPCO for payment of outstanding amount of the bills under the contract executed by the State with the writ petitioners. The dispute, if any, between the State and the NEEPCO would be and could be settled in the proceeding taken up either by the State or NEEPCO and not in the writ petitions filed by the contractors-writ petitioners. When it is an admitted case of the State that the contracts were between the State and the petitioners, the works assigned under the contracts were completed and the amount claimed was also admitted, the responsibility to make the payment is that of the State. It is not the concern of the contractors in what manner and under what modalities the work requirement was generated which has resulted in issuance of the work contracts by the State in favour of the petitioners.

9. More importantly it is noticed that though the liability for payment of contractors bills was fixed upon the NEEPCO as well as the State Govt. including the concerned department jointly by the learned single Judge and despite the claim of the State respondents that they were not liable to make any payment of such nature, the State Govt. has not filed any appeal before us challenging such direction of the learned single Judge. More so, it transpires from the records that NEEPCO was not given any reasonable opportunity of being heard for which they failed to project their case appropriately and adequately before the learned single Judge.

10. In that view of the matter, it is the responsibility of the State Govt. including the P. W. Department to clear the outstanding bill amount as directed by the learned single Judge. Consequently the direction given to NEEPCO by the learned single Judge in the impugned judgments for payment of outstanding bills to the writ petitioners/private respondents is hereby set aside and quashed. We make it clear that we have not decided any question of liability for payment of bill amount inter se between the State and the NEEPCO in this case. It is open for both the parties to settle their dispute amicably or by approaching the appropriate forum.

11. With the aforesaid observations and directions this batch of writ appeals succeeds and accordingly stand allowed. No costs.