

(2014) 05 MEG CK 0021

In the Meghalaya High Court

Case No : Writ Appeal No. 39/2013 in W.P. (C) No. 306/2013, Writ Appeal No. 40/2013 in W.P. (C) No. 307/2013 and Writ Appeal No. 41/2013 in W.P. (C) No. 308/2013

Patel Engineering Ltd. and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Citation : (2014) 05 MEG CK 0021

Hon'ble Judges : T. Nandakumar Singh, J; Sudip Ranjan Sen, J

Bench : Division Bench

Advocate : A. Saraf, Sr. Advocate and A. Goyal, Advocates for the Appellant; V.K. Jindal, Sr. Adv., S. Dey and Q.B. Lamare, Advocates for the Respondent

Judgement

T. Nandakumar Singh, J.—These three writ appeals between the same parties involving the same question of law are taken up together for hearing today.

2. Mr. V.K. Jindal, learned senior counsel appearing for the respondents very fairly, under the instructions from the respondents submitted that pursuant to the consent order of the parties passed by the Apex Court dated 13.12.2013 for disposing of the 3(three) SLPs, the respondents had already made an endeavour to invite fresh NIB (Notice Inviting Bids) for the contract work of transporting of sand and boulders from the approved Govt. quarries mentioned in the NIB dated 11.10.2013. The lowest bids offered by the contractors in response to the new NIB are 100 times higher than the estimated cost for transportation of sand and boulders from the approved Govt. quarries mentioned in the impugned NIBs i.e. 3 (three) impugned NIBs dated 11.10.2013. It would be more profitable to quote the consent order of the parties dated 13.12.2012 passed by the Apex Court below:--

"ORDER

Leave granted.

Respondents No. 1 and 2 have appeared on caveat.

Notice to Respondent No. 3 is dispensed with.

We have heard learned counsel for the parties at some length. The impugned order is an interim arrangement made by the Division Bench of the High Court of Meghalaya at Shillong whereby the High Court has permitted the writ petitioners - respondents in this petition to collect sand and boulders from three different quarries mentioned in letter dated 25.09.2013 for use in the construction of 600 MW Kameng Hydro Electric Project in the State of Arunachal Pradesh. The High Court has also simultaneously stayed three NIBs all dated 11.10.2010 inviting bids for collection, loading, unloading and stacking of boulders and sand at three different sites mentioned in the said order.

Having argued the matter at some length, learned counsel for the parties agreed to the following arrangement being made in substitution of the order passed by the High Court.

1) The appellant Corporation shall be free to invite fresh NIBs in connection with the works mentioned above for all the three sites referred to in the order passed by the High Court and process the bids received in response thereto. Formal Award of contracts based on the said process shall however remain stayed pending final disposal of the writ Appeals No. 39 to 41 of 2013 by the Division Bench of the High Court.

2) Writ Petitioners-Respondents No. 1 and 2 shall in the meantime be free to collect sand and boulders for use at the three sites from the quarries mentioned in the appellant's letter dated 25.09.2013.

3) The High Court to make an endeavour to expedite the hearing and disposal of the appeal filed before it by the writ petitioners as far as possible within three months from the date the Pleadings are complete and a copy of this order filed before it.

In the circumstances, therefore, we see no reason why this appeal cannot be allowed and disposed of on the agreed terms set out above. We order accordingly leaving the parties to bear their own costs.

New Delhi,

December 13, 2013."

3. Mr. V.K. Jindal, learned senior counsel appearing for the respondents submits that as the lowest bids quoted by the contractors is 100 times higher than the estimated cost, it will not be continued to finalize the tender in the interest of public at large. Therefore, the respondents had already cancelled the new NIB. In support of this fact, Dr. A Saraf, learned senior counsel for the appellants also produced the document to show that the new NIB had already been cancelled. We have also perused the document in this regard placed by Dr. A Saraf, learned senior counsel appearing for the appellants and it is clear that fresh NIB had

already been cancelled. The Registry is directed to place the document in the file of the present writ appeals.

4. As per the consent order of the parties passed by the Apex Court dated 13.12.2013, the appellants shall free to collect the sand and boulders for use at 3 (three) sites mentioned in the NIB or the 3 (three) sites mentioned in the respondents' letter dated 25.09.2013.

5. In the affidavit-in-opposition filed by the respondents in the present writ appeals, it is clearly stated that "since there was huge financial involvement on transportation of the materials from the far off Govt. approved quarries and in order to cut short the expenditure, the respondent authorities decided to issue the impugned NIB dated 11.10.2013". It is also stated in the affidavit-in-opposition that "it is true that the supply of aggregates, including excavation, loading, transportation, crushing, screening, washing, blending and storage is included within the scope of the work, but the same is from the particular distance of quarry shown in the location map i.e. 500M from the Bichom Dam Axis. The transportation of stone and boulders from Jameri quarry, which is at a distance of 79 Km is not within the scope of work. The endeavour made by the respondents by inviting a bid for transportation of sand and boulders from the approved Govt. quarries is only for reducing the financial involvement".

6. It appears that the present arrangement at the provisional rate for transportation of sand and boulders from the approved Govt. quarries in pursuance of the said letter of the respondents dated 25.09.2013 is found to be much less than the rate quoted by the lowest bidder. From this fact, it is clear that financial involvement in transportation of sand and boulders by the appellants at the provisional rate from the approved Govt. quarries is much less than that of the lowest bidder. Therefore, it appears that the present arrangement for transportation of sand and boulders from the approved Govt. quarries pursuant to the said letter of the respondents dated 25.09.2013 mentioned in the said consent order of the parties passed by the Apex Court dated 13.12.2013 is much beneficial to the public at large. It goes without saying that the sand and boulders are the natural resources and the natural resources belong to the people. The Govt. or State instrumentality is the trustee of the natural resources for the people. Learned senior counsel appearing for the parties submit that the present financial involvement in the transportation of the sand and boulders at the present provisional rate by the present appellants pursuant to the said order dated 25.09.2013 is much beneficial to the public at large.

7. The relief sought for in the connected writ petitions filed by the present appellants are (i) quashing or canceling the impugned NIBs dated 11.10.2013 and also the fresh NIB dated 31.01.2014; and (ii) for a direction to the respondents to allow the writ petitioners/appellants to continue transportation of sand and boulders from the approved Govt. quarries mentioned in the said letter of the respondents i.e. dated 25.09.2013 as a part of the earlier contract. As

stated above, the 2 (two) impugned NIBs i.e. dated 11.10.2013 and fresh NIB dated 31.01.2014 had been cancelled as endeavour made by the respondents to reduce the financial involvement in transportation of the materials from the approved Govt. quarries is found to be futile inasmuch as, there shall be huge financial expenditures for the respondents in finalization of the impugned NIBs.

8. In the above factual backdrop, these writ appeals appeared to be infructuous. However, it is made clear that the respondents shall allow the writ petitioners/ appellants to collect sand and boulders for use at the 3(three) sites from the approved Govt. quarries mentioned in the respondents' letter dated 25.09.2013 as a part of the earlier contract, which is also mentioned in the consent order passed by the Apex Court dated 13.12.2013.

9. With the above directions, these writ appeals are disposed of.