
(2014) 03 MEG CK 0006
In the Meghalaya High Court
Case No : W.P. (C). No. 75 of 2014

Patel Engineering Ltd. and Unity Infraprojects Ltd.	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 03 MEG CK 0006

Hon'ble Judges : Prafulla C. Pant, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, C.J.—Heard.

2. By means of this writ petition, the petitioner has made the following prayer:

In the aforesaid premises it is therefore prayed that Your Lordship may be graciously be pleased to call for records and issue a Rule, calling upon the respondents to show cause as to why a writ of mandamus and/or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India should not be issued directing the Respondents to forbear and refrain from awarding any contract for transportation of quarry material such as boulders and sand from Government approved and legally operated quarries under the Government of Arunachal Pradesh to the site located at Bichom Dam under the Kameng HE Project 600 MW Arunachal Pradesh for executing of work by the Petitioner for Package I [Civil Works for Bichom Dam, River Diversion, Bichom Intake and Head Race Tunnel from R.D. 0.0 to 4,400 Meters + 500 Meters (First Half of the Bichom - Tenga Portion)] and as to why a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India should not be issued directing the Respondent to continue to permit the Petitioners to fetch aggregates/boulders/stones/sand for the Project from the Government approved

quarry at Jameri and upon cause and/or causes as may be shown and after hearing and after hearing the parties be pleased to make the Rule absolute and/or pass and/or pass such further order/orders as Your Lordship may deem fit and proper in the facts and circumstance of the case.

And for which act of kindness your Petitioners, as in duty bound, shall ever pray.

3. Briefly stated in the earlier round of litigation, WP(C) No. 306 of 2013 was filed by the writ petitioners which was dismissed summarily by this bench vide order dated 29-10-2013 which is reproduced below:

ORDER

Hon"ble Prafulla C. Pant, Chief Justice

Heard.

2. By means of this writ petition, the writ petitioner has sought writ in the nature of Certiorari and/or writ in the nature of Mandamus in respect of Notice Inviting Bids dated 11-10-2013 issued by the respondent-Corporation for supply of boulders/sand from quarry centres in Jameri, Dirang and Lung (Arunachal Pradesh) to Bichom Dam (Arunachal Pradesh).

3. Briefly stated the petitioner is the contractor who has been given work contract for construction of Dam in Arunachal Pradesh, by the respondent-Corporation. The copy of the agreement is filed with the writ petition. It is pleaded by the learned counsel for the writ petitioner that Notice Inviting Bids could not have been issued by the respondent-Corporation inviting third parties to transport/supply the stones and sand from the quarry site to the dam site.

4. However, having considered submissions of Learned counsel for the parties, this Court is prima facie not satisfied that under the agreement between the writ petitioner and the respondent-Corporation, the respondent-Corporation was barred from inviting tenders or to make supply of the boulders/sand to the writ petitioner at the dam site. From the papers on record, it appears that after the boulders and sand could not be found out near the site of the dam, the same was required to be taken from Jameri, Dirang and Lung site. Admittedly, the petitioner was temporarily allowed to transport minerals from the above mentioned sites to the dam site, only on his request and the permission granted to him has expired on 14-10-2013. It is not the case of the petitioner that respondent-Corporation would charge any payment from him for supplying boulders etc at the dam site. Simply stated the case is that it is the petitioner would demand extra charge for transportation of boulders etc at dam site, which the respondent North Eastern Electric Power Corporation Limited wants to supply free to him by incurring lesser expenditure by inviting tenders in which petitioner can also participate.

5. In the above circumstances, since the writ petitioner can also participate in the bid floated by the Corporation, this Court is not inclined to interfere in the

matter.

6. Therefore, the writ petition is dismissed summarily.

4. Against the above quoted order, writ appeal No. 39 of 2013 was filed in which the Division Bench of this Court vide its order dated 1-11-2013 passed an interim order with the following concluding paras:

In the interest of public, we are of the considered view that an interim order is called for. Accordingly, the NIB dated 11.10.2013 for collection, loading, unloading and stacking of boulders and sand to the project site located at Bichom Dam site, NIB dated 11.10.2013 for collection, loading, unloading and stacking of boulders and sand to the project site located at Tenga Dam site under Kameng H.E. Project and NIB dated 11.10.2013 for collection, loading, unloading and stacking of boulders and sand to the project site located at Kimi Power House site under Kameng H.E. Project and the impugned judgment and order dated 29.10.2013 shall remain suspended.

However, the present appellants/writ petitioners as usual exclusively for the construction of the dam for which the said contracts works were awarded, can collect the sand and boulders from the quarry from where respondent No. 2 under his letter dated 25.09.2013 allowed the present appellants/writ petitioners to collect the sand and boulders. Considering the matter involves in this case, the respondent No. 2 is at liberty to file any application for modification, alteration or cancellation of the interim order at any time.

List this case again after 5 (five) weeks.

In the interregnum, the respondents may file affidavit-in-opposition.

5. It appears that the respondents approached the Apex Court against above order including one passed in connected writ petitions and filed SLP (C) No. 36587 of 2013 along with SLP(C) No. 36684 of 2013 and SLP(C) No. 36756 of 2013 in which the Apex Court passed the following order allowing Civil Appeal No. 11224 of 2013, 11225 of 2013 and 11226 of 2013 vide order dated 13-12-2013 which reads as under:

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 appellants 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 pleading are complete and a copy of this order filed before it.

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

6. From the prayer in the present writ petition, it appears that the fresh NIBs allowed to be invited by the respondents, by the Supreme Court, are challenged in the writ petition which in my opinion is not maintainable, particularly when the writ appeal is still pending. In the above circumstances, this Court is of the view that if this present writ petition is entertained, it would amount to abuse of process of law.

7. Therefore, the present writ petition is dismissed summarily.