
(2015) 03 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition(C) 4929/2013

Sailen Kumar Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Citation : (2015) 2 GLT 210

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : S. Sarma, G. Goswami and B. Devi, for the Appellant; A.D. Choudhury, M. Khataniar, C. Sarma and D.P. Borah, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J.—Heard Mr. S. Sarma, learned counsel for the petitioner as well as Mr. A.D. Choudhury, learned counsel representing respondent No. 8. Also heard Mr. M. Khataniar, learned counsel appearing for the respondents No. 5 and 6 and Ms. C. Sarma, learned counsel appearing for the Public Works Department.

2. As agreed to by the learned counsels, this writ petition is taken-up for final disposal.

3. The petitioner is a local contractor of Tangla Town in the District of Udalguri. Anticipating that the work relating to "improvement/upgradation of Mangaldoi Bhutiachang Samrang Road from CH. 47722 M to CH 48292 M and from CH 50000 M to CH 62500 M including cross-drainage works" under NLCPR project is likely to be undertaken without complying with the Guidelines for administration of Non-Lapsable Central Pool of Resources (NLCPR) project and funds, have instituted the present proceedings. The petitioner contends that the Ministry of Department of North East Region i.e. DoNER has released NLCPR funds of about 30 crores for the work in question falling under the PWD, Mangaldoi State Road Division i.e. respondent No. 7. According to the petitioner, the said work was sought to be taken out from the office of the said respondent No. 7 at the

instance of the Additional Chief Engineer, PWD (Roads), BTC, Kokrajhar i.e. respondent No. 5 for implementation through the Udalguri Rural Road Division, Udalguri i.e. respondent No. 6. While doing so the concept paper and the Detailed Project Report (DPR) has also been prepared and submitted by the said respondent No. 6 to the State Planning and Development Department, Dispur, who in turn has forwarded the DPR through the Chief Secretary, Government of Assam to the Ministry of DoNER. Referring to Clause 7 of the guidelines the petitioner contends that no work can be allotted without approval of the project by the Ministry of DoNER i.e. respondent No. 2 and that even after approval, the State Government must ensure that tender is called on competitive basis by giving wide publicity in print media, website etc. According to the writ petitioner, the concerned State Authority is preparing to issue the notice inviting tender (NIT) contrary to the said Guidelines.

4. The second contention raised by the petitioner is to the effect that the NIT that may be issued for the work in question be split up in small groups so that small and medium contractors can also participate in the tender process to overcome dearth of work and hardship resulting from sitting ideal. The third contention urged is with regard to the nature of power, authority and extent of power of the Additional Chief Engineer, PWD (Roads), BTC Kokrajhar (Respondent No. 5) to issue Invitation For Bid (IFB) under the Delegation of Financial Power Rules, 1999. According to the petitioner the said respondent No. 5 is not competent to float IFB/NIT for the work in question as per the Government Notification dated 26.02.2008 (Annexure-2 of the writ petition). According to the writ petitioner, power is vested only with the Chief Engineer, PWD (Roads) Assam and not with the respondent No. 5.

5. Fourthly and as alluded to above, the petitioner contends that as the work in question falls under the Mangaldoi State Road Division (respondent No. 7), as such the preparation of the concept paper and the DPR was the responsibility of the said respondent No. 7 and the same could not have been prepared and submitted by Udalguri Rural Road Division (respondent No. 6).

6. Lastly the petitioner contends that the DPR shows a highly inflated estimated cost as compared to the cost of construction of other portion of the same road. According to the petitioner, such inflated estimated cost indicates the intention of the respondent to confer undue benefit to the contractor who would be awarded with the work, not to speak of a sizeable portion of the illegal benefit going into the pockets of the departmental authorities. According to the petitioner this aspect needs to be investigated by an independent agency to put a check to misuse of public money.

7. On the premises aforesaid the petitioner prays for appropriate directions towards stoppage of the issuance of tender, for preparation of a fresh DPR by respondent No. 7 and sending it for approval to the Ministry of DoNER, for issuance of NIT by the Chief Engineer, PWD (Roads) Assam after approval is received from the Ministry of DoNER by giving wide publicity and by splitting the

work into small groups, for initiation of an independent enquiry against the respondent No. 5 and finally for cancellation of the work if the same has already been allotted to any contractor and thereafter to re-tender the same after completion of the enquiry.

8. The respondent No. 3 i.e. the Commissioner and Secretary to the Government of Assam, Public Works Department, the respondents No. 5 and 6 i.e. the Additional Chief Engineer, PWD (Roads), BTC and the Executive Engineer, Udalguri Rural Road Division as well as the respondent No. 8 i.e. the newly impleaded private respondent being the successful bidder in the IFB, have filed affidavit-in-oppositions. As the counter affidavit filed by respondent Nos. 5 and 6 meets the contentions and challenges of the writ petitioner, the same is adverted to for the purpose of deciding this case.

9. In the said counter affidavit and at the very outset the respondents avers that the writ petition is liable to be dismissed in limine as without amending the writ petition, the petitioner has filed Misc. Case No. 2685 of 2013 for setting aside the work order dated 20.07.2013 as well as the NIT dated 13.06.2013. At this stage, this Court places on record that there is force in the submission of the respondents.

10. Replying to the first contention, the respondent placed reliance on the documents at Annexure-I, II and III to the counter affidavit to show that due approval of the NLCPR project to be undertaken by the Public Works Department in Udalguri District was accorded by the Government of India in the Ministry of DoNER and the Ministry of Road, Transport and Highways. Also, the administrative and financial approval of the Government of India was duly communicated to the Planning and Development Department, Government of Assam in respect of the work in question. Further, it is the case of the respondents that after receipt of approval from the concerned authorities, the IFB/NIT was issued under the signature of the respondent No. 5 and the said NIT was given wide publicity through print media i.e. Batori Kakot (Assamese), Assam Post (English), Bodosa (Boro) and as well as in the website, as would be apparent from the Annexure-VIII series and Annexure-IX to the counter affidavit.

11. As regards to the petitioner's contention that the work in question should be split up into smaller groups, the respondent argues that the petitioner is in no position to demand splitting-up of the work, inasmuch as, it is a policy decision of the government and the petitioner is without any locus to interfere in the same. The respondent also says that the said demand has been made by the petitioner as he is not otherwise qualified to bid or participate in the tender process.

12. The issue with regard to as to whether the Additional Chief Engineer, PWD (Roads) BTC i.e. respondent No. 7 is competent to issue IFB/NIT in respect of the work in question which is valued more than Rs. 1 crore, the respondents submits that the notification dated 26.02.2008 (Annexure-2 to the writ petition), which

has been relied upon by the petitioner, relates only to technical sanction. According to the respondents there is yet another notification of 08.09.2011 issued by the Public Works Department in the Bodoland Territorial Council Secretariat showing that the Additional Chief Engineer in his capacity as the Director of BTC has full financial powers in respect of Public Works Department in the BTC area under the provisions of Delegation of Financial Powers and Rules, 1999.

13. As against the fourth contention, it is the case of the respondents that as the project falls within the BTC area and Udalguri District being part and parcel of the Bodoland Territorial Autonomous District, as such, the contention of the petitioner is devoid of any merit, more so, in view of the letter dated 02.12.2011 of the Ministry of DoNER at Annexure-I to the counter affidavit which mentions the work in question under the heading "BTC Areas".

14. Referring to the affidavit-in-opposition filed by the respondent No. 3 i.e. the Commissioner and Secretary to the Government of Assam, Public Works Department, the respondent Nos. 5 and 6 denies that the estimated cost is inflated. According to the respondents, out of the total cost of the work estimated at Rs. 29.92 crores, the cost of construction of 13.07 kilometres of road would be Rs. 19.26 crores and the remaining amount of Rs. 10.66 crores is meant for construction of a major RCC bridge and 28 Nos. of culverts. A bare calculation, according to the respondents, would show that the cost per kilometre of road would come to Rs. 1.47 crores, which by no means is an inflated estimate.

15. Having heard the learned counsels at length and after having perused the documents available in the records, it is apparent that on account of subsequent events taking place, the writ petition in the present form does not survive for consideration. The entire proceedings is now basically reduced to an academic discussion and issuance of a writ, even if called for, would be a futile exercise. Much water has flown after the filing of the writ petition, in that NIT has been issued and work order has also been issued to the successful bidder in pursuance whereof the work in question is on the verge of completion.

16. It would be important to notice that no challenge has been made to the notice inviting tender or to the work order, either by an independent writ proceeding or by amending the present writ petition. In fact, even on this date the said NIT and the work order remains un-assailed. Be that as it may, there is no manner of doubt that the contentions advanced by writ petitioner are wholly unfounded and without merit, save one aspect which the Court feels that due notice should be taken. In any case, having regard to the facts and circumstances this writ petition is liable to be dismissed and is accordingly done.

17. Before parting with the case, reference is made to the work order dated 20.07.2013 at Annexure-B to the affidavit-in-opposition filed by the respondent No. 8. The said work order is under the signature of the Additional Chief

Engineer, PWD, BTC i.e. respondent No. 5. The notification dated 08.09.2011 relied upon by the respondents to say that the said respondent No. 5 in his capacity as the Director of BTC has full financial powers in respect of Public Works Department in BTC area requires to be revisited. A fresh decision is required to be undertaken by the concerned authorities, inasmuch as, whereas the extent of power granted to the Director to accept tender is limited to 2 crores, the work order dated 20.07.2013 is apparently in excess of his power. Under the said notification dated 08.09.2011 it is the Council which has been given full power to accept tender in excess of Rs. 2 crores and that to on recommendation from the tender committee constituted for the purpose. In the work order of 20.07.2013 there is no mention that the respondent No. 5 as a signatory has issued the work order with authority given by the Council. This aspect of the matter with regard to the extent of power of the respondent No. 5 in respect of work valued above 2 crores needs to be looked into and decided before any further major exercise is undertaken by the Public Works Department.

18. In view of the above, this writ petition stands dismissed, however, without any order as to costs.