
(2019) 12 MAN CK 0007

In the Manipur High Court

Case No : Writ Petition (c) No. 267, 906 Of 2019

Th. Nodichand Singh And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2019) 12 MAN CK 0007

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : L. Anand, Lenin Hijam

Final Decision : Disposed Of

Judgement

Kh. Nobin Singh, J

[1] Heard Shri Ajoy Pebam, learned counsel appearing for the petitioner in writ petition being WP(C) No. 267 of 2019 while Shri L. Anand, learned counsel appearing for the petitioner in writ petition being WP(C) No. 906 of 2018 and Shri Lenin Hijam, learned Addl. Government Advocate appearing for the State respondents.

[2] Since both the above writ petitions have arisen out of a similar set of facts, the same are being decided and disposed by this common judgment and order.

[3] On 20-10-2014, the Chief Engineer, Manipur State Rural Roads Development Agency (herein referred to as "the MSRRDA") issued its first NIT inviting item rate tender, through e-procurement for Pradhan Mantri Gram Sadak Yojna (herein referred to as "the PMGSY"), from eligible contractors for execution of various contract works including the Package-MNO 555. Due to certain reasons, the second NIT dated 27-12-2014 was issued by the Chief Engineer, MSRRDA but it was cancelled by the respondents and the bid process in respect of Package-MNO 555 was repeated by issuing a third NIT date 18-01-2016 inviting item rate tender through e-procurement for the Package-MNO 555.

[4] Shri Th. Nodiachand Singh, the petitioner in WP(C) No.906 of 2018 and M/S Manikchand & Co, the petitioner in WP(C) No.267 of 2019 who are hereinafter referred to as the petitioner and the private respondent, along with other contractors, participated in the e-tender in respect of Package-MNO 555 for construction of the Road from "T03 to Karang Part-II" under Wangoi Block of Imphal West District under the guiding principles of the PMGSY. After the financial bid being opened, the bid rank of the petitioner was at L1 while that of the private respondent was at L4. Accordingly, the Chief Engineer, the respondent No.2 issued a letter of acceptance dated 19-11-2016 and the work order dated 15-04-2017 in favour of the petitioner, on the basis of which he started constructing the earth work with due cognizance and permission of the competent authority after investing huge money and effort.

[5] Being aggrieved by the said letter of acceptance dated 19-11-2016 and the work order dated 15-04-2017, the private respondent who was one of the bidders, approached this Court on 24-04-2017 by way of a writ petition being WP(C) No.296 of 2017 challenging them on the ground that the performance security and additional performance security were furnished by the petitioner after the expiry of ten days as prescribed in the NIT. This Court passed a judgment and order dated 08-08-2017 allowing the said writ petition and consequently, the letter of acceptance dated 19-11-2016 and the work order dated 15-04-2017 were quashed and set-aside. The said judgment and order dated 08-08-2017 passed by this Court appears to have been challenged by the petitioner before the Hon'ble Supreme Court by way of a petition for special leave to appeal which was dismissed and accordingly, the official respondents issued a work order dated 10-04-2018 in favour of the private respondent without re-tendering the process in respect of the said package-MNO-555 as contended by the petitioner.

[6] The said work order dated 10-04-2018 was challenged by the petitioner on the inert-alia grounds that while passing the judgment and order dated 08-08-2017, this Court did not give any direction to the official respondents for issuing the work order dated 10-04-2018 in favour of the private respondent; that in terms of clause 8.15 of the tender documents, the tender process shall be repeated where the performance security is not furnished; that since the official respondents have reserved the right either to accept or reject the bids, they ought to have cancelled the tender process and initiated the process for re-tender and that the act of the official respondents in issuing the work order without affording opportunity to the petitioner is arbitrary, illegal and violation of Article 14 and 21 of the Constitution of India. This writ petition was contested by the private respondent by filing an affidavit-in-opposition stating that after the petitioner having failed to get any relief from the Hon'ble Supreme Court, the official respondents after, considering all the eligible bidders, issued the work order in favour of the private respondent and moreover, this court while passing the judgment and order dated 25-07-2017 did not interfere with the NIT, as it was not challenged by it. It has further been stated that in respect of a similar

case being Package-MNO 936, although this Court quashed the work order dated 21-03-2011, the official respondents awarded the contract to Shri Khupkhohao Kilong who was the petitioner therein. The PMGSY scheme being a flagship programme, the execution of the work was to be completed within 12 months reckoning from 17-04-2018. While the sad writ petition being WP(C) No.906 of 2018 was pending for consideration, the private respondent filed an application being MC No.327 of 2018 praying for permission to raise an objection as regards the maintainability of the said writ petition.

[7] After the work order dated 10-04-2018 being issued in its favour, the private respondent started the execution of the work and while it was executing the work, the respondent No.2 issued a letter dated 29-08-2018 directing it to stop construction of work which appears to have been issued pursuant to a letter dated 25-08-2018 issued by the Project Director, Loktak Development Authority wherein it is stated that the said proposed road falls within the area of the Loktak Lake. Since the private respondent had completed 80% of the work, it requested the respondent No.2 by way of a representation dated 16-10-2018 requesting him to allow it to complete the construction of work, followed by a legal notice dated 30-11-2018. But the respondent did not pay any heed to its representation at all. It may be noted that the respondent No.2 wrote a letter dated 21-02-2019 to the Project Director, LDA clarifying that the Karang Yangbi Road is not within the Core Zone of the Loktak Lake. But as the respondent No.2 did not revoke its letter dated 29-08-2018, the private respondent filed the writ petition being WP(C) No.267 of 2019 questioning both the letter dated 25-08-2018 of the Project Director, LDA and the letter dated 29-08-2018 issued by the respondent No.2.

[8] During the course of the proceedings, it was brought to the notice of this Court by the learned Addl. Advocate General that the dispute between the Rural Engineering Department, Government of Manipur and the Loktak Development Authority remained unresolved and on 30-04-2019, this Court expressed the need of having a resolution between them for which the learned Addl. Advocate General was granted time to find an amicable solution. On 21-05-2019 when the matter was taken up for consideration, it was submitted by the learned Addl. Advocate General that although a meeting was held, the dispute could not be resolved by them. In the meantime, a representation dated 13-05-2019 was submitted to the Chief Engineer, RED by the private respondent stating that it was no longer interested in the continuance of the execution of the work and a prayer was made that the security deposit for a sum of Rs.51,90,000/- be refunded and the pending bill for a sum of Rs.14,90,309/- be released in the interest of justice. While granting further time to the Addl. Advocate General, this Court observed that the Chief Engineer, RED was not precluded from considering the said representation of the private respondent. On 14-06-2019 when the matter was listed again, the counsel appearing for the private respondent submitted that its representation was not considered by the official respondents and therefore, the official respondents were granted time till 05-07-2019 for

disposal of the representation. On 03-07-2019, the Chief Engineer, RED informed the private respondent that since it could not drop the work in the middle of the execution of the work, it would be better for it to wait for the solution. But since the Rural Engineering Department and the Loktak Development Authority having failed to resolve the dispute between them, this Court passed an order dated 05-07-2019 observing that there was no point of keeping the matter pending awaiting their resolution which is quite uncertain and that the matter be listed on 22-07-2019 for disposal. Thereafter, sufficient time was granted by this Court to the parties to complete their pleadings and ultimately, the matters were heard on 25-11-2019.

[9.1] It is not in dispute that the PMGSY is a flagship programme, launched by the Government of India, which is to be implemented within a time frame. In the present case, admittedly the work was to be executed in 12 months. The first NIT was issued on 20-10-2014 by the Chief Engineer, RED in respect of the Package-MNO 555 which was cancelled and the second NIT dated 27-12-2014 was issued which, too, was cancelled by the official respondents and the third NIT date 18-01-2016 was ultimately issued inviting item rate tender through e-procurement for the Package-MNO 555. It may be noted that the third NIT was issued after the expiry of more than a year from the date of issuing the first NIT, leave alone the completion of the work within a year. It is the Rural Engineering Department, Government of Manipur which has to be careful and apply its judicious mind. In other words, the officials of the Rural Engineering Department who are responsible for the implementation of the PMGSY, need to be sincere in the discharge of their duties and functions. If they fail to do that, the implementation of such a welfare programme will be rendered meaningless. It is the right time for the Rural Engineering Department to be introspective; to examine minutely as to how many works have been executed and completed by them in time and to stop playing with the public money in the name of the execution of the works. If the mistake is committed by the Rural Engineering Department only in this case, it is understandable. But there are many packages in respect of which many writ petitions have been filed before this Court challenging the process of tender. This shows that the officials of the Rural Engineering Department may have done it either due to lack of sincerity or incapability to handle the work. In other words, the officials of the Rural Engineering Department are incapable of handling the work or have done it deliberately with hidden agenda being kept in mind. If the tender process is undertaken by the Rural Engineering Department strictly in accordance with law and in particular, the clauses contained in the tender documents, many of the problems could have been avoided by it.

[9.2] After the financial bid being opened, the petitioner being found to be the L1, the respondent No.2 issued a letter of acceptance dated 19-11-2016 and the work order dated 15-04-2017 in favour of the petitioner, on the basis of which he allegedly started constructing the earth work. The private respondent challenged them by way of a writ petition being WP(C) No.296 of 2017 on the ground that

the performance security and additional performance security were furnished by the petitioner after the expiry of ten days as prescribed in the NIT. This Court vide its judgment and order dated 08-08-2017 allowed the said writ petition quashing the letter of acceptance dated 19-11-2016 and the work order dated 15-04-2017. A petition for special leave to appeal preferred against it before the Hon'ble Supreme Court was dismissed and accordingly, the official respondents issued a work order dated 10-04-2018 in favour of the private respondent which is being challenged by the petitioner. The private respondent appears to have started the work as contended by it. The Project Director, LDA wrote a letter dated 25-08-2018 stating that the said proposed road falls within the area of the Loktak Lake, on the basis of which the respondent No.2 issued a letter dated 29-08-2018 directing the private respondent to stop construction of work. The private respondent, having completed 80% of the work, made a request vide its representation dated 16-10-2018 requesting the official respondents to allow it to complete the construction of work, followed by a legal notice dated 30-11-2018. Since the official respondents did not pay any heed to its representation at all, the private respondent filed the writ petition being WP(C) No.267 of 2019 questioning both the letter dated 25-08-2018 of the Project Director, LDA and the letter dated 29-08-2018 issued by the respondent No.2. From the aforesaid circumstances, it is seen that it is the Rural Engineering Department, Government of Manipur and in particular, its officials who are to be blamed for the said events. The process of tender will have to be initiated and completed in terms of the tender documents which contain various clauses. Had the clauses been followed by them in their true spirit, the aforesaid litigation could have been avoided by the Rural Engineering Department. It is unfortunate that although the officials of the Rural Engineering Department were aware of the clause that the performance security and additional performance security had been furnished by the petitioner beyond ten days as prescribed in the NIT, the respondent No.2 issued the letter of acceptance and the work order. He ought not to have done that and before doing that, he could have consulted the Law Department or the learned Advocate General for legal advice as regards the interpretation of the various clauses contained in the tender documents which he appears to have failed to do that. Interestingly, after the said letter of acceptance and the work order having been quashed by this Court and the appeal preferred before the Hon'ble Supreme Court having failed, the respondent No.2 issued the work order in favour of the private respondent which was the L4, probably, without assigning any cogent reason, because of which its validity and correctness is being challenged by the petitioner.

[9.3] While the private respondent was executing the work, the respondent No.2 issued a letter dated 29-08-2018 directing it to stop the work. This letter dated 29-08-2018 was issued by the respondent No.2 pursuant to a letter dated 25-08-2018 of the Project Director, LDA. Thus, a dispute arose between them with respect to the said road, for which the private respondent cannot be said to be responsible at all. Before the tender process being initiated, the Rural

Engineering Department appears to have not applied its mind. The dispute is between the State Government and its statutory body and in other words, the dispute being between two hands of the State Government, it ought to be resolved by them sitting across the table without bringing it to the notice of this Court. It is an internal problem of the State Government. Despite sufficient opportunities being given by this Court to the State Government, it has failed to resolve it and in other words, it has utterly failed to do its needful which is unfortunate. It is the Rural Engineering Department which has created the problem and therefore, it is the duty of the Rural Engineering Department to find out a solution. Being fed up with the dispute between the State Government and its statutory body, the private respondent has expressed its desire to discontinue with the work. But its request was turned down on the ground that the work could not be stopped in the middle of its execution. On the one hand, the respondent No.2 did not permit the private respondent to continue with the work and on the other hand, its request was rejected. Of course, the work order issued in favour of the private respondent is being challenged by the petitioner. In any case, the Rural Engineering Department, Government of Manipur cannot blow hot and cold at one time. The Rural Engineering Department being an institution, it has to act fairly and reasonably and in the interest of the general public. Since the dispute between the State Government and its statutory body is not the subject in issue before this Court in the above writ petitions, it may not be appropriate for this Court to make any observation thereon. But it has no doubt a bearing on the issue involved herein and moreover, unless it is resolved by the State Government at an early date, it will definitely have a problem in complying with any order passed by this Court in the matter. It is upto the State Government to take a decision but the stalemate which cannot be allowed to continue without any resolution, will not, in any case, be in the interest of the work but this Court will have to decide the issue involved herein based on the materials available on record.

[10] Keeping in mind the peculiar facts and circumstances of the present case, the above writ petitions stand disposed of with the following directions:

- (a) The State Government shall take appropriate and immediate steps to ensure that the dispute between the Rural Engineering Department and the Loktak Development Authority is resolved at an early;
- (b) The respondents and in particular, the respondent No.2, the Chief Engineer, RED shall return to the private respondent, M/S Manikchand & Co., the security deposit for a sum of Rs.51,90,000/- deposited by it within three months from the date of receipt of a copy of this judgment and order, failing which it shall accrue interest @ 8% per annum till the date of return;
- (c) The respondents and in particular, the respondent No.2, the Chief Engineer, RED shall release the amount for the work done so far by the private respondent, M/S Manikchand & Co., within three months from the date of receipt of a copy of this judgment and order after the same being worked out and verified from the

records;

(d) The respondents and in particular, the respondent No.2, the Chief Engineer, RED shall release the amount for the work done by the petitioner, Th. Nodiachand Singh, before the letter of acceptance dated 19-11-2016 and the work order dated 15-04-2017 issued in his favour, within three months from the date of receipt of a copy of this judgment and order after the same being worked out and verified from the records;

(e) It is open to the State Government and in particular, the Rural Engineering Department, to take appropriate steps for taking a decision towards discontinuation of the work and take an initiative for a fresh tender in respect of the remaining work.