

(2014) 06 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 88 (K) of 2014

Yikhyao Lotha

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Right to Information Act, 2005 — Section 16(1), 16(2), 16(3), 6(1)(1)

Citation : (2015) 2 GLD 169 : (2014) 4 GLT 871

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : C.T. Jamir, Sr. Advocate, Advocate for the Appellant; T.B. Jamir, Addl. A.G. and A. Zho, Advocate for the Respondent

Judgement

Prasanta Kumar Saikia, J.—This proceedings has been initiated seeking following reliefs:-

"In the premises aforesaid, it is most respectfully prayed that your Lordship may be please to admit this petition, call for the records of the case, issue notice calling upon the respondent to show causes as to why a writ of mandamus as prayed for should not be issued quashing and setting aside the impugned order No. Tour/ENGG-601/2013-14, dated Kohima, the 30th January, 2014 (Annexure "B" to the writ petition) and further direct the State respondents to call for NIT in connection with the work for construction of Tourist Reception Centre at Mekokla, Vill, Wokha, Nagaland. And or be further pleased to pass such other order or orders as your Lordship may deem fit and proper".

The facts necessary for disposal of the present proceeding, in short, are that the petitioner herein is the attorney holder of M/s. A.T. Jami & Sons. On the strength of power of attorney, the petitioner has filed the present proceeding against the State respondents and M/s. Mhaden Shitiri seeking reliefs, aforementioned.

2. It has been stated that for development of Tourism in State of Nagaland,

Department of Tourism had undertaken a project for establishment of various Tourist Reception Centres in the different villages in the State of Nagaland. Such programme has been initiated since 2011.

3. The subject matter in the present proceeding pertains to allotment of work for construction of Tourist Reception Centre at Mekokla Village, under Wokha District, cost of which was estimated at Rs. 45,82,810/- only. The petitioner hails from Mekokla village where the work in question was to be implemented. The petitioner was aware of the fact that the Government has undertaken to construct Tourist Centre at Mekokla village as well and as such he was under impression that in course of time NIT would be called for seeking bids from the prospective bidders for construction of Tourist Centre at Mekokla village.

4. However, in the month of April, 2014, the petitioner came to know that the work for construction of Tourist Reception Centre at Mekokla village was awarded in favour of the respondent No. 5 in a most surreptitious manner without floating NIT which is one of the foremost conditions for settling Government legacy. On coming to know about the settlement of the aforesaid contract in favour of the respondent No. 5, the petitioner filed an application under RTI Act seeking copy of the work order and also information about the release of fund for executing the work awarded to the respondent No. 5.

5. In response to such query, the authority concerned vide letter dated 5.5.14, furnished a copy of the work order dated 30.01.14 to the petitioner. However, no information could be given in regard to the second query on the ground that the department was yet to receive necessary sanction against the scheme.

6. According to the petitioner, a certain well established mechanism has been put in place for regulating the settlement of Govt. contract and in that connection, the Nagaland Public Works and Accounts Rules/Codes, 2012 and Central Public Works Department Code have been referred to. According to all those Codes and Rules, before awarding the Govt. contract, there should be wide publicity so that the prospective bidders are aware of the floating of Government works so that work can be executed in a best possible way, and that too, at a very competitive rate.

7. However, all these formalities which are to be followed very strictly and meticulously by all the departments have been thrown to the wind for favouring ones blue eyed boys of the department at the cost of public exchequer and quality work. The, petitioner, therefore, approached this Court seeking aforesaid reliefs.

8. The notice of proceeding was served on the respondents. The State respondents as well as the private respondent have entered appearance and having filed separate counter affidavits, they contested the claim of the petitioner in this proceeding. In their common counter affidavit, the State respondents contend that the work in question was allotted to the respondent No. 5 strictly in accordance with the procedures, prescribed under the Rules.

9. In that context, it has been submitted that by the NIT dated 10th October, 2013, the work in question as well as 17 other works were floated seeking bids from the prospective bidders. Under the aforesaid NIT, a period of one month was granted for submitting the tender. In due course, in respect of work in question, three parties have submitted tenders and the petitioner being found the best of bidders was awarded the work. Therefore, there was no infirmity whatsoever in awarding contract in question to the respondent No. 5.

10. In regard to the allegation that the respondent No. 5 was not competent to participate in the tenders process for his registration with the Nagaland Contractors and Suppliers Union (in short "the NCSU") being lapsed for non-renewal since before the floating of the NIT aforesaid, it has been stated that such an infirmity is too trivial to have any adverse effect on the issuance of work order in favour of the respondent No. 5.

11. According to the State respondents, the respondent No. 5 is a registered contractor of the department and has never been disqualified by the department for any lapses whatsoever. Therefore, so long the respondent No. 5 is recognized as a registered contractor of the department, only for non-renewal of his membership with NCSU, he cannot be deprived off from getting departmental contract.

12. The further case of the State respondents was that a certificate has already been issued by the Vice President of NCSU which is attached as Annexure-B to the counter affidavit of respondent No. 5. Such certificate clearly reveals that respondent No. 5 had already applied for renewal of his registration with NCSU and such application is under active consideration of the NCSU. Being so, it can very well be held that lapses for registration of the respondent No. 5 with the NCSU cannot come in the way of private respondent securing the work, offered by Public Works Department, Nagaland.

13. Private respondent having filed separate counter affidavit advanced a case which is very similar to the case forwarded before this Court by the State respondents. He further claims that since the petitioner is not an aggrieved party, this proceeding is liable to be dismissed on this count alone inasmuch as he never applied for securing the work offered through the NIT dated 10.10.13 although there was adequate publicity amongst the prospective bidders.

14. In regard to the allegation that having allotted the work in question, in favour of the petitioner, the State respondents had violated the Memorandum dated 30th June, 1986, it has been stated that he is a Class-1 contractor, duly registered with the PWD, Nagaland and has never been disqualified by the department for any reason whatsoever and as such, only for his registration with the NCSU being lapsed at the time when NIT aforesaid was floated, he cannot be deprived of work in question if he is otherwise found qualified for such work.

15. It is also the case of all the respondents that almost 70% of the works allotted to the private respondent has already been executed and therefore, if, at

this stage, the work order is quashed as prayed for by the petitioner, the private respondent would suffer irreparable loss which would also cause serious hardship and inconvenience to the public. Therefore, the respondent No. 5 prays for dismissal of the present proceeding.

16. Mr. T.B. Jamir, learned Addl. Advocate General praying for dismissal of this present proceeding, submitted that the jurisdiction of the writ Court over contractual disputes, more particularly, where the decision of the Govt. is questioned, is very limited. The writ Court cannot interfere with the commercial contract settled by the Govt. unless there is enormously serious infirmity in decision making process of the Government leading to allotment of such commercial contract in favour of some extremely undeserving person or persons.

17. In support of such contention, my attention has been drawn to the decision of this Court in the case of Educomp Solutions Ltd. and Others Vs. State of Assam and Others, as well as the decision rendered in the case of Sri Muslim Ali Vs. The Gauhati University and Others, .

a) In Educomp Solutions Ltd. & Ors. (supra), this court held as follows:-

"Para 26. As early as in the year 1969 Mathew in V. Punnen Thomas Vs. State of Kerala, observed:- The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal".

"Para 29. In Tata Cellular Vs. Union of India, , the Apex Court held that the principles of judicial review would apply in all their force to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. The Apex Court held: "However, there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (underline supplied). Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy, thus they are not essentially justifiable and the need to remedy any unfairness. Such an unfairness is set right any judicial review.

The judicial power of review is exercised to rein any unbridled executive

functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention, the other covers the scope of the Court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself. It is thus different from the appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school-master substituting its judgment for that of the administrator.

The duty of the Court is thus to confine itself to the question of legality. Its concern should be:

- (1) Whether a decision making authority exceeded its powers?
- (2) Committed an error of law,
- (3) Committed a breach of the rules of natural justice,
- (4) Reached a decision which no reasonable tribunal would have reached or,
- (5) Abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair.

b) Similar view was also rendered in the case of Muslim Ali (supra) where it was held as follows:--

"Para 23. The scope of judicial review in the matter of award of contracts is very limited and the Court will exercise discretion only when it is satisfied that the action of the public authority is detrimental to public interest".

"Para 24. In Jagdish Mandal (supra), the Apex Court at paragraph 22 observed thus:

"Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is sound". When the power of judicial review is involved in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at distance. If the decision relating to award of contract is bona fide and is in public interest, Courts will not, in exercise of judicial review; interfere

even if a procedural evaluation or error in assessment of prejudice to tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor can always seek damages in a Civil Court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of mole hills of some technical/procedural violation or some prejudice to self, and persuade Courts to interfere by exercising powers of judicial review should be resisted. Such interference either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(1) Whether the process adopted or decision made by the authority is mala fide or intended to favour some one or

(2) Whether the process adopted or decision made is an arbitrary and irrational that the Court can say the decision is such that no responsible authority with relevant law could have reached.

(3) (1) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of state largess (allotment of sites/shops, grant of licences, leadership and franchise) stand on a different footing as they may require a higher degree of fairness in action".

18. Referring to the decision of Supreme Court in the case of Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, , learned Addl. Advocate General again contended that writ Court would not interfere with the decision making process of the State respondents unless it is shown that Court had to interfere with such decision making process in the greater interest of the public. However, in the present case, the petitioner could not make out a case that the alleged offending conduct on the part of State respondents needs interference in public interest. The relevant part of the judgment in Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd. & Anr. (supra) is reproduced below:-

"Para 13. In Sterling Computers Ltd. Vs. M. & N. Publications Ltd., it was held as under (SCC p. 458, paras 18, 19)." 18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the decision making process..... By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time... the Courts can certainly examine-whether "decision making process" was reasonable rational, not arbitrary and violative of

Article 14 of the Constitution.

If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.

"Para 15. The law relating to award of contract by the State and public sector corporations was reviewed in *Air India Ltd. V. Cochin International Airport Ltd.* and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporation, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere".

19. Learned counsel for the respondents have contended that since 70% of the work has already been completed, this Court should not interfere with the work in question even if it is found that work aforesaid was allotted to the respondent No. 5 not strictly in accordance with the Rules and Procedures holding the field. In that connection, reliance has been placed on the decision, rendered in *Muslim Ali (supra)*. The relevant part is reproduced below:-

"Para 26. In the affidavit in opposition which was filed on 18.5.2012, in paragraphs 9 and 32, while it was stated that 60% of the work was completed, in paragraph 21, it was stated that more than 35% work was already completed. Mr. Sharma, the learned counsel for the respondent Nos. 1 to 4 had submitted that the word 35% was wrongly typed and the same should have been typed as 60%."

"Para 27. The affidavit of respondent No. 5, filed on 4.2.2012, shows that almost 90% of the work was under completion. As noted earlier, there was no rebuttal affidavit to the affidavit of the respondent No. 5.

"Para 28. In view of the aforesaid discussion the provisional work order dated 12.12.2011 issued by the respondent No. 4 does not require interference in exercise of powers under Article 226 of the Constitution of India, and accordingly, the writ petition shall stand dismissed".

20. On the other hand, the learned counsel for the petitioner while conceding that the scope of judicial review over the contractual disputes, more particularly

where Government is a party is extremely limited also contends that the writ Court must not shrink its constitutional obligation or must not sit idle whenever State and its instrumentalities are found resorting to enormous illegality or where such decisions are marked with palpable perversity. Rather it needs to raise to the occasion to correct the decision which are clear product of perversity, illegality or colossal irregularity.

21. I have carefully gone through the pleadings of the parties having regard to the arguments, advanced by the learned counsel for the parties keeping various documents annexed with the pleadings as well as the decisions relied on by the parties in view. The learned counsel for the petitioner strenuously argues that Public Works Department Code, Nagaland requires that sealed tenders should be invited in most open and public manner possible and tender process should be conducted in a most transparent manner so that the state largess can be settled with the best of bidders.

22. For ready reference the relevant Rule (Rule 291) is reproduced below:

"CALLING AND ACCEPTANCE OF TENDERS

Sealed tenders should invariably be invited in the most open and public manner possible, by advertisement in the Government Gazette or the press, or by public notice. Tenders should have free access to the contract documents. The notice should state:-

1. The place where, and the time when, the contract documents can be seen, and blank forms of tender obtained.
2. The place where, and the time and date on which tenders are to be submitted and are to be opened.
3. The amount of earnest money to accompany the tenders and the amount and nature of the security deposit required in the case of the accepted tender. The earnest money required should be deposited in the treasury and the duplicate copy of the treasury Challan being attached to the tender. Cheques on banks should not be accepted for this purpose.
4. With whom, or with what authority, the acceptance of the tender will rest".

23. In that connection, my attention has also been drawn to Chapter 4 of the Nagaland Public Works and Accounts Rules, 2012 (in short, the Rules of 2012) which deals with Tender, Agreement & Work Order. According to item No. 13, under sub-head "tender", notice of tender are to be endorsed to all the Deputy Commissioners of the Districts, Secretary of the Department, all major heads of development departments, notice board. In addition to above, such notice is to be sent to newspaper for publication.

24. According to the learned counsel for the petitioner, the Nagaland Public Works and Accounts Rules, 2012 has already been notified and, therefore, the conditions, stated in item No. 13 under sub-head the "tender" in Chapter 4 of the

Rules, 2012 needs to be followed in letter and spirit.

25. The learned counsel for the petitioner has also submitted that in the matter of settlement of contract, the department in question is also required to follow the Central Public Works Department Works Manual, 2007, more particularly, Section 6(1)(1), (2) and (3). For ready reference, Section 16(1), 16(2) and 16(3) are reproduced below:

"16(1). Wide publicity should be given to the Notice Inviting Tenders (Form CPWD 6). Tenders must be invited in the most open and public manner possible, by advertisement in the website/press and by notice in English/Hindi and the written language of the district. A copy of the notice should be sent to the Central PWD Division, Zonal Office, Circle Office, operating at the station of the work and head quarters of the Divisional office. The notice may also be sent to the Local Municipality, Collector's Office, and the State PWD Divisions for works in places where there are not enough CPWD registered contractors".

"16(2). Notice for all the works, irrespective of their value, shall be posted in the CPWD website. Proof thereof in the form of a printout of NIT details and the Tender I.D. No. Form the web page shall be kept on record. In view of this requirement" sending of NIT's NIQ's to the Contractors" Association is dispensed with"..

16(3). In respect of works estimated to cost more than Rs. 5 lakhs, a brief advertisement inviting tenders should invariably be inserted in the press in the classified category".

26. Here, it may be stated that though Mr. Jamir, submits that the Rules of 2012 have not yet been notified yet Mr. C.T. Jamir states that aforesaid Rules has already been notified and has been in operation on the date on which the NIT in question was floated and as such, the department concerned is to follow such Rules whenever State legacies are offered for execution through public participation and same needs to be done in terms of conditions stipulated in the Rules of 2012.

27. Since the Rules 2012 has already been notified, the conditions stipulated there are to be followed for the purposes for which such Rules are brought into existence. A careful reading of above provisions together with clause 291 of the PWD Code as well as the CPWD Works Manual, 2007 unmistakably reveals that the modes, prescribed in those Codes/Rules are to be followed whenever the State largesses are offered for execution through public participation. Now, the question is whether the modes, prescribed in those Codes and Rules were followed in the case under consideration.

28. I have already found that in terms of Clause 291 of the PWD Code, the tender notice is to be published in Govt. Gazetted or Press or by public notice. Item 13 under the sub-head tender under head tender, agreement and work order in Chapter 4 of the Rules of 2012 further requires that the tender notice

are to be endorsed to all DCs Secretary of the Department, all Major heads of Development department, and notice board. In addition, such tender notices are to be sent to the newspapers for publication.

29. Moreover, the C.P.W.D. Code, amongst other things, also requires that whenever the value of the work is estimated at Rs. 5 (five) lakhs or more, tender notice should invariably be published in newspapers seeking bids from the prospective bidders. Unfortunately, very unfortunately, none of those requirements were followed in the case under consideration.

30. In fact, those Codes and Rules were honoured more in violation than in observance. A bare perusal of the NIT in question makes such a position very clear. Therefore, there cannot be any escape from the conclusion that in settling the contract in question in favour of private respondent, the department violated all the rules and procedures vis-a-vis settlement of contract.

31. The learned Addl. Advocate General, however, contends that in the case in hand, the NIT was published in the notice board and according to him, such publication is a publication as contemplated in Clause 291 of the PWD Code. Such publication also satisfies the requirement of CPWD Code and the requirement of the Rule, 2012. Unfortunately, such contention hardly meets the specifications, made in aforesaid Codes and Rules and as such, I have no hesitation in rejecting such all argument.

32. I have already found that vide O.M. dated 30th June, 1986 State respondent requires all the heads of department and Administrative Department to settle the Govt. Contract only with the contractors/suppliers who are registered with the NCSU. Such position has been reiterated in 1995 vide O.M. dated 4th October, 1995 as well as late as 2014 vide letter dated 15th April, 2014 as well as letter dated 26th May, 2014 same being the letter from Chief Engineer, PWD (Housing) and Chief Engineer, PWD (R & B) respectively.

33. The aforesaid memoranda and letters clearly show that in order to be a successful bidder in respect of Govt. contract in the State of Nagaland, one is required to be registered with the NCSU. Evidently and admittedly, on the date on which NIT in question was floated, the private respondent was not a contractor registered with the NCSU. Therefore, in terms of the aforesaid O.M. and letters, the respondent No. 5 could not have been considered and chosen for settlement of contract in question.

34. The learned Addl. Advocate General and learned counsel for the private respondent submit that the respondent No. 5 has already applied for renewal of his registration and the NCSU also certifies that the application seeking renewal of registration is under active consideration of the later. Therefore, for all practical purposes, the private respondent remains a valid member of the NCSU even on the date on which NIT in question was floated.

35. Above argument, advanced from the side of the respondents is found to be

without any substance. It is an admitted position that on 10th October, 2013 when NIT was floated, the respondent No. 5 was not a member of the NCSU. He remains so till date although after filing of the present proceeding, he submitted an application to the NCSU seeking renewal of his registration with the former.

36. Such revelation emphatically demonstrates that on 10th October, 2013, the respondent No. 5 did not have requisite qualification to apply for work floated through NIT dated 10.10.2013 and as such, he should not have been offered work in question. This is yet another reason for which the work order needs to be quashed and set aside.

37. The learned counsel for the respondents have claimed that since the petitioner did not come before this Court seeking the relief aforesaid in time, the present petition needs to be rejected on this count alone, more so, when 70% of the work has already been executed when the petitioner had filed the present proceeding. Opposing such a contention, the petitioner submits that he came to know about the settlement of contract in question long after, such work was allotted to the respondent No. 5.

38. He further claims that he came to know about such settlement of work in favour of respondent No. 5 only in the month of April, 2014 and that too on getting information furnished to him by authority concerned in response to the application filed by him under the RTI Act. On getting such information and on coming to know about the illegality committed in settling the work in question with the respondent No. 5, he immediately instituted the present proceeding in the month of May.

39. Therefore, it cannot be said that there was delay in his approaching the Court and such delay now necessitates the Court to dismiss the present proceeding. I have considered the above submission in the light of Para 5 of the writ petition and have found reason to concur with the claim of the petitioner that he instituted the present proceeding immediately after coming to know about illegal and unjust settlement of work in question in favour of respondent No. 5.

40. The respondent No. 5 has also claimed that the proceeding needs to be dismissed since the petitioner is not an aggrieved party as he never participated in the tender process in question although NIT was properly published. Our forgoing discussion has already established that NIT was published in a hush-hush manner without giving any information to the public in general and aspiring the bidders in particular. This only shows that the petitioner and many others similarly situated with him were not aware of floating of NIT in question.

41. Situation being such, those prospective bidders including the petitioner could not be expected to participate in such tender process initiated and conducted quite surreptitiously. This is one more testimony of petitioner along with many other similarly situated persons aspiring to participate in the aforesaid tender process having sustained legal injury and as such, it cannot be said that they did

not suffer any injury and thus, they are not entitled to file any proceeding against the illegal settlement of work in favour of respondent No. 5.

42. The learned counsel for the respondents have claimed that jurisdiction of the writ Court over contractual disputes is very limited, more so when the State or its instrumentalities are the parties to such contractual disputes. Therefore, unless it is shown that the settlement of work suffers from enormous perversity or illegality, writ Court cannot interfere with the settlement of contract by the State or its instrumentalities.

43. Unfortunately, in the instant case, the work in question was settled with the respondent No. 5 in total violation of all Rules and procedures holding the field. More importantly, such settlement was done in a hush-hush manner. All these show that the work aforesaid was settled with the respondent No. 5 by the State respondent in most arbitrary and illegal exercise of authority.

44. Being so, despite the scope of judicial review being very limited over the contractual dispute, in my firm opinion, this is a case where this Court needs to rise to the occasion in order to correct some illegality of enormous proportion in settling the Work under consideration in favour of respondent No. 5.

45. I have already found that 70% of the work had already been executed when the proceeding in hand was instituted. In normal circumstances, the writ Court would have rejected a proceeding under Article 226 of the Constitution on such count alone. However, in the facts and circumstances, which are narrated hereinbefore, this Court find it necessary not to dismiss the present proceeding despite 70% of the work in question being executed on the date of institution of proceeding in hand.

46. In the result, the work order in question is set aside and quashed. However, since about 70% of the work has already been completed, I find it necessary to direct the State respondents to measure the work already done, and then to issue fresh NIT in respect of the remaining works and to bring such tender process to its conclusion in accordance with the relevant rules and procedures as early as possible but in no case beyond 2(two) months from the date of receipt of a certified copy of this order.

47. It is needless to say that the respondent No. 5 is to be paid for the work already done at the rate as agreed to between the parties.

48. Resultantly, this writ petition is allowed and disposed of. No costs.

49. Before parting with the record, I find it necessary to express the displeasure of this Court the way the work in question was allotted to the respondent No. 5. The State functionaries are the custodians of the properties of the State and such custodians are expected to discharge their functions in such a way that their works benefit the public, more particularly, the downtrodden ones who contribute handsomely to the exchequer so that the public servants are adequately paid their dues for the works rendered to the public though most of the most of public

live in abject poverty. And although most of them have to run from pillar to post to arrange two square meals a day. However, such trust stands breached in the case in hand. This is extremely unfortunate. However, this Court hopes and believes that in future, the State functionaries would not resort to the activities which have been narrated herein before. Otherwise, the offending officials would be taken to task in accordance with law.