

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

**WP(C) No. 378 of 2022 with WP(C) No. 379 of 2022 with
WP(C) No. 380 of 2022 with WP(C) No. 381 of 2022 with
WP(C) No. 382 of 2022**

Envision Construction and Suppliers, represented by its
Proprietor, Shri Kapani Athilu Khrasi, aged about 39 years,
s/o Shri Th. Kapani Athilu Khrasi, resident of Makhan
Khullen, P.O Maram Bazar, P.S Mao, Senapati District,
Manipur - 795015

....Petitioner

-Versus-

1. The State of Manipur, represented through the Addl. Chief Secretary (Tribal Affairs & Hills), Government of Manipur, Old Secretariat, Babupara, P.O & P.S. Imphal, Imphal West District, Manipur – 795001
2. The Director (Tribal Affairs & Hills), Government of Manipur, Old Secretariat, Babupara, P.O & P.S.Imphal, Imphal West District, Manipur-795001
3. The Executive Engineer-II (Tribal Affairs & Hills), Government of Manipur, Babupara, P.O & P.S.Imphal, Imphal West District, Manipur-795001
4. The Executive Engineer-I (Tribal Affairs & Hills), Government of Manipur, Babupara, P.O & P.S.Imphal, Imphal West District, Manipur-795001

.. Respondents

BEFORE
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioner :: Dr. R.K Deepak, Advocate,

For the Respondents:: Mr. A. Vashum, Govt. Advocate

Dates of hearing :: 10-10-2022

Date of judgment/ :: 10-01-2023
Order

JUDGMENT AND ORDER

Heard Dr. R.K Deepak, learned counsel appearing for the petitioner and Mr. A. Vashum, learned GA appearing for the respondents.

[2] The present five writ petitions had been filed with the prayer, inter alia, for quashing and setting aside the impugned orders dated 26-04-2022, which cancelled the work orders dated 12-06-2020 issued in favor of the petitioner, as well as for quashing and setting aside the fresh NITs dated 11-05-2022 and also for directing the respondents to allow the petitioner to commence the contract work by re-scheduling the date of commencement of the work.

As the facts and issues involved in the five writ petitions are the same, all the writ petitions were heard jointly and being disposed of by this common judgment and order.

[3] The petitioner is a registered first class contractor in the department of Tribal Affairs & Hills, Government of Manipur.

The case of the petitioner is that with a view to enhance infrastructure development in the hills district of Manipur, the State Cabinet took a decision in its meeting held on 12-10-2019 to adopt restricted tender for the contract work of infrastructure development of 3 (three) Eklavya Model Residential School (EMRS) at Moreh, Tamenglong & Gamnom, Sapermaina. Pursuant to the said Cabinet decision, the Under Secretary (Tribal Affairs & Hills), Government of Manipur sent a proposal to the Director, Tribal Affairs & Hills, Govt. of Manipur to adopt restricted tender in respect of the contract works for infrastructure development for the said three EMRS where estimated cost of each work is less than 1.5 crore, vide letter dated 25-10-2019. After obtaining the approval of the Government, the Executive Engineer, Tribal Affairs & Hills, Government of Manipur issued three separate notices bearing numbers 2, 3 & 4, all dated 10-02-2020 inviting restricted sealed tender from intending approved and eligible registered contractors of the department for execution of the works mentioned in the said NITs.

[4] The petitioner submitted bids in respect of 5 (five) works and having found to be the lowest bidder and having fulfilled all the terms and conditions of the tender, the petitioner was awarded the following works by issuing five separate work orders all dated 12-06-2020 issued by the Executive Engineer-II, Tribal Affairs & Hills, Manipur :-

(a) Eklavya Model Residential School, Tamenglong :

(i) Rigid pavement and shingling of road and construction of retaining wall;

(b) Eklavya Model Residential School, Moreh, Tengnoupal:

- (i) Water supply and sanitary installation for staff quarters Block-A & B;
- (ii) Internal electrification for science and staff quarters Block-A & B;

(c) Eklavya Model Residential School, Gamnom, Sapermaina:

- (i) Water supply and sanitary installation for Hostel Block-A and Block-B
- (ii) Internal electrification for Hostel Building Block-A & B and Science Block.

As per the said work orders, the time allowed for executing the work was given as 12 (twelve) months and the following terms and conditions were also given:-

Terms and Condition

1. You are requested to attend the office of the undersigned to complete the Agreement and other formalities within 7 days from the issue of the letter.
2. The date of start of the work is reckoned from 18.06.2020 i.e, seven days from the date of issue work order to commence the work shown in the scheduled.
3. Your attention is drawn to clause 1 of the contract hereby time allowed for carrying out the work as entered in the tender shall be strictly observed by you. The progress work be mentioned corresponding to the time given time of

completion. If 50% of the work is not executed within the given time of completion of the work, it is the sufficient ground of cancellation of the work.

4. The undersigned is not liable for any payment for work (s) done/executed completed after the stipulated time.
5. The work should be carried out as per the specification and estimates enclosed herewith and failure of which this office is not responsible for payment.
6. You are to contact the Assistant Engineer in-charge of the work immediately and obtain the necessary technical guidance and selection of works site etc. before the commencement of the work.
7. No materials shall be issued by the department.
8. Constructions should be strictly based to the speculation as per Design & Drawing of the Department.

[5] After the issuance of the NIT dated 10-02-2020 and before issuing the work orders dated 12-06-2020, the Government of India imposed total lockdown in the whole country due to the pandemic of Covid-19 from the later part of March, 2020. Even after partial lifting of the total lockdown imposed by the Government of India, the State Government continued to impose total lockdown in the whole state to contain the pandemic of Covid-19 and to safeguard the health and lives of the citizens.

It is also the case of the petitioner that the premises of all the three EMRSs' at Tamenglong, Sapermaina and Moreh were utilized as quarantine centers from the month of May, 2020 as per the orders of the concerned District Magistrate and only after the issuance of the order dated 02-11-2021, the Government stopped utilizing the said three school premises as quarantine centers for covid patients. According to the petitioner, during the period from the month of May, 2020 till the month of November, 2020, the premises of the said three schools were utilized by the Government as quarantine centers/containment zone and because of the strict restriction imposed by the Government, movement in and around the premises of the said three schools were strictly prohibited. Due to the aforesaid situation prevailing in the state of Manipur, the petitioner could not start execution of the work within the period stipulated under the terms and conditions No. 2 of the work order dated 12-06-2020. It is also the case of the petitioner that in view of the nature of the works awarded to him, he could not start executing the works unless and until construction of the building for staff quarters, Science Blocks, Hostel Blocks etc., which were awarded to other contractors are completed.

[6] The petitioner verbally requested the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur, for giving necessary technical guidance and selection of work site so as to enable him to start the work and complete the same on time. Instead of providing necessary technical guidance and selection of work site as requested by the petitioner, the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur issued an order dated 01-12-2020 cancelling all the work orders

issued in favor of the petitioner on the ground that the petitioner failed to start executing the work within the time stipulated under clause (2) of the terms and conditions of the work orders.

[7] After issuance of the cancellation order dated 01-12-2020, the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur, issued an NIT dated 07-12-2020 in respect of the same works earlier awarded to the petitioner. Having been aggrieved, the petitioner assailed the cancellation order dated 01-12-2020 and NIT dated 07-12-2020 by filing a writ petition being WP(C) No. 146 of 2021 before this Court. In the said writ petition, this Court passed an interim order on 25-02-2021 directing that the process of tender in respect of the impugned NIT shall remain suspended. During the pendency of the said writ petition, the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur issued an order dated 17-03-2021 cancelling the earlier NITs dated 10-02-2020 as well as the subsequent NIT dated 07-12-2020. Subsequently, the Executive Engineer-II issued an order dated 22-03-2021 revoking the first cancellation order dated 01-12-2020 as well as another order dated 01-12-2021 reviving/restoring the earlier NIT dated 10-02-2020.

[8] In view of the revocation of the first cancellation order and restoration of the earlier NITs dated 10-02-2020, this Court disposed of the pending writ petition by passing an order dated 10-12-2021. In the said order, this Court directed the State respondents to re-schedule the time period that has been prescribed in the work order dated 12-06-2020. The petitioner communicated the orders passed by this Court to the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur, by

submitting a representation dated 12-01-2022 and also requested to allow the petitioner to commence the works and to extend the time period for completion of the work.

[9] Instead of allowing the petitioner to commence work by re-scheduling the time period prescribed in the work order, the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur issued an order dated 29-12-2021 cancelling, for the second time all the earlier work orders issued in favor of the petitioner. Thereafter, the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur issued another three NITs all dated 13-01-2022 in respect of the same work awarded earlier to the petitioner and without cancelling the first NITs dated 10-02-2020. Having been aggrieved, the petitioner challenge the said cancellation order dated 29-12-2021 as well as the new NITs dated 13-01-2022 by filing WP(C) No. 63 of 2022 before this Court. In the said writ petition, this Court passed an interim order on 27-01-2022 directing that the impugned NITs shall remain suspended. Subsequently, the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur, issued two orders dated 04-03-2022 and 09-03-2022 cancelling the impugned NITs as well as the impugned cancellation order dated 29-12-2021. In view of the said two orders, all the writ petitions filed by the writ petitioner challenging the said NITs and the impugned cancellation order were closed as infructuous.

[10] The State Government filed a batch of writ appeals challenging the common orders dated 06-12-2021, 08-12-2021 and 10-12-2021 passed by the learned Single Judge in the batch of writ petitions directing the state authorities to re-schedule the time period that was prescribed in the work order issued in favor

of the petitioner. All the writ appeals were disposed of by a common order dated 28-03-2022 passed in Writ Appeal No. 6 of 2022 and other analogous writ appeals by setting aside the direction given by the learned Single Judge to re-schedule the time period for execution of the work pursuant to the work order issued in June, 2020. The Appellate Court further directed the authorities to consider the reply submitted by the petitioner in response to the show cause notice dated 14-01-2021 by giving an opportunity of personal hearing and thereafter, to decide each case as to whether there was any willful delay or negligence on the part of the contractor concerned warranting punitive action. The Appellate Court further observed that in the event, no such lapse is found to be attributable to the contractor concerned, the authorities shall re-schedule the time period for the execution of works.

[11] In purported compliance with the direction of this Court, the authorities issued a show cause notice dated 04-04-2022 directing the petitioner to submit in writing on or before 16-04-2022 as to why he could not execute the works awarded to him within the period stipulated under clause (2) of the terms and conditions of the work order. In response to the said show cause notice, the petitioner submitted his reply in writing on 13-04-2022 explaining in detail the reasons for the inability to commence the works. Subsequently, the Additional Chief Secretary (TA & Hills), Government of Manipur, issued an order dated 26-04-2022 cancelling all the work orders dated 12-06-2022 awarded to the petitioner and also directing to issue fresh tenders and fresh work orders. Thereafter, the Executive Engineer – II, Tribal Affairs & Hills, Government of Manipur issued three fresh NITs all dated 11-

05-2022 in respect of the works earlier awarded to the petitioner. Having been aggrieved, the petitioner filed the present writ petitions assailing the said cancellation order dated 26-04-2022 and the NIT dated 11-05-2022 for redressing his grievances. In the present writ petitions, this Court passed interim order dated 24-05-2022 directing that no further steps should be taken up pursuant to the impugned NIT dated 11-05-2022 without leave of this Court.

[12] Learned counsel appearing for the petitioner submitted that before issuance of impugned order dated 26-04-2022, the work orders awarded to the petitioner were cancelled by the authorities on two earlier occasions. At the first instance of cancellation, the reason given by the authorities was for non-commencement of the execution of work as per clause (2) of the terms and conditions of the work order. Subsequently, the authorities revoked the cancellation order suo moto by issuing another order, which clearly indicated that the reason for cancellation of the work order was unjustified. At the time of issuing the second cancellation order, no reason whatsoever was given by the authorities for cancelling the said work orders. Later on, the second cancellation order was again revoked by the authorities suo moto, thereby clearly indicating that there was no justifiable reason for cancelling the work orders awarded to the petitioner. For the third time, the authorities again cancelled the work orders awarded to the petitioner by issuing the impugned orders dated 26-04-2022. The only reason given by the authorities for such cancellation is for breach of clause (2) of the terms and conditions of the work orders dated 12-06-2020.

[13] Learned counsel for the petitioner submitted that under clause (2) of the terms and conditions of the work order, there is no term and condition for cancellation of the work orders if the contractor breach any of the conditions mentioned therein. Only under clause (3) of the said terms and conditions, it is provided that if 50% of the work is not executed within the given time of completion of the work, it will be sufficient ground for cancellation of the work. Learned counsel further submitted that as the authorities cancelled the work orders dated 12-06-2020 awarded to the petitioner on 01-12-2020 well before the expiry of the given period for execution of the work, there was no reason whatsoever for cancelling the work orders awarded to the petitioner. Learned counsel accordingly submitted that the authorities have acted arbitrarily and unreasonably in issuing the impugned order and such action deserved interference from this Court by quashing and setting aside the impugned order dated 26-04-2022.

[14] Learned counsel also submitted that as there was no justifiable reason for cancellation of the work orders awarded to the petitioner and as the authorities have not yet cancelled the earlier NIT dated 10-02-2020, there was no reason for issuing the impugned NITs dated 11-05-2022 and that the authorities have issued the impugned NIT without application of mind and accordingly, the impugned NITs are also liable to be quashed and set aside.

[15] It is also submitted that in spite of the best intention and effort on the part of the petitioner, work at the allotted sites could not be started because of the prevailing situation in the State due to the pandemic of Covid-19. After the award of the

work order, the petitioner was unable to commence the work because of several restrictions in entering the work site as the premises of the three EMRS were declared as containment zone. It has also been submitted that there was also acute shortage of labour as the labour force was unwilling to work under the prevailing Covid-19 situation and that the Government SOP issued in connection with the Covid-19 pandemic prohibits labour force to work in groups. The learned counsel for the petitioner vehemently submitted that in view of the nature of works awarded to the petitioner, it was not possible for the petitioner to start the work unless and until the construction of the building for staff quarters, science blocks, hostel blocks etc., are completed by the other contractors. It has also been submitted that if the authorities gave a little co-operation, the petitioner could have completed the work within the stipulated time.

[16] Learned counsel also submitted that, the authorities ignored the request of the petitioner to provide technical guidance and selection of work site etc., which are required to be followed as per the terms and conditions of the work order before commencing the work and that without specifically identifying the work site, without providing the specific task to be done and without providing the technical guidance as to how the task are to be performed, it was not feasible and practicable for the petitioner to execute the work. It is also submitted that the work orders awarded to the petitioner have been cancelled without giving any valid and justifiable reason and by ignoring the reply to the show cause notice as well as the reasons/explanations given therein. Accordingly, the action of the authorities in cancelling the work orders are arbitrary, bias, unlawful and illegal.

Learned counsel also submitted that the authorities made an unreasonable allegation against the petitioner in the impugned order that the petitioner failed to start execution of the work despite lapse of more than 18 (eighteen) months. In this regard, learned counsel for the petitioner submitted that the reason for non-commencement of the execution of work was due to non-cooperation of the on the part of the officials of the department in giving technical guidance and selection of work site as well as the impossibility of commencing the work during the pandemic of Covid-19 as well as the nature of work to be executed by the petitioner and that the authorities never consider these valid reasons at the time of issuing the impugned order.

[17] Mr. A. Vashum, learned G.A. appearing for the respondents, submitted that the petitioner was awarded the contract works for infrastructure development of EMRS at Tamenglong, Gamnom, Sapermeina and Moreh by issuing work the orders dated 12.06.2020. As per the terms and conditions of the contract work, the petitioner was to attend the office of the respondents to complete the agreement and other formalities within 7 (seven) days from the date of the issue of the work order. Secondly, the petitioner was to start execution of the work from 18.06.2020, i.e., 7 (seven) days after the date of issue of the work order. Thirdly, if the petitioner does not execute 50 percent of the work within the time allocated for completion of the work, it is sufficient ground for cancellation of the work order. Fourthly, as soon as the work order was issued, the petitioner was to contact the Assistant Engineer In-charge of the work immediately and obtain a necessary technical guidance and selection of work site etc. before the commencement of the work.

[18] The learned G.A. further submitted that in spite of obtaining the work order dated 12.06.2020, the petitioner never contacted the Assistant Engineer In-charge of the work and also did not complete the agreement and other formalities as stipulated in the terms and conditions of the contract work. It has also been stated that since the petitioner did not contact the Assistant Engineer In-charge of the work and since the petitioner did not commence the work within the stipulated time, the authorities cancelled the work order on 01.12.2020 in terms and conditions under clause (1), (2), (3) & (6) of the terms and conditions of the work order.

[19] The learned G.A. submitted that the Division Bench of this Court disposed of the batch of writ appeals filed by the State Government by common order dated 28.03.2022 by setting aside the direction given by the learned Single Judge to re-schedule the time period for execution of the work. While disposing of the said batch of writ appeals, the Division Bench also directed the authorities to consider the reply submitted by the petitioner in response to the show cause notice dated 14.01.2021 by giving an opportunity of personal hearing and thereafter to decide each individual case as to whether there was any willful delay or negligence on the part of the contractor warranting punitive action. It has been submitted that in compliance with the order passed by the learned Division Bench, the authorities heard the petitioner in person and also considered the reply submitted by him in response to the show cause notice dated 04.04.2022 and passed the impugned order dated 26.04.2022 thereby cancelling the work orders awarded to the petitioner.

[20] The learned G.A. also submitted that the authorities issued similar work orders to different contractors for executing the work of water harvesting and solar pumps installation in the same 3 (three) schools, i.e., EMRS at Tamenglong, Gamnom, Sapermeina and Moreh, Tengnoupal during the same period of Covid pandemic. It has also been submitted that the other contractors successfully executed the said works within the prescribed period for completion of the works, whereas the petitioner failed to execute the works awarded to him. It has also been submitted that if the other contractors can execute the work during the period of Covid Pandemic, the petitioner cannot take the plea that he cannot execute the work awarded to him because of the pandemic of Covid – 19, which shows that the petitioner does not want to execute the work.

[21] The learned G.A. vehemently submitted that the claim of the petitioner that the authorities did not provide necessary technical guidance and selection of work site etc. despite his request is unacceptable because the petitioner requested the concerned Executive Engineer for providing such technical support and selection of work site only after a gap of more than 5 (five) months and accordingly, the authorities cannot accede to the request made by the petitioner. It has lastly been submitted by the learned G.A. that the authorities have not committed any illegality or irregularity in issuing the impugned orders and accordingly, the present writ petitions are liable to be dismissed as being devoid of merit.

[22] I have heard the submissions of the learned counsel appearing for the parties at length and also carefully examined the materials available on record.

It is an undisputed fact that the work orders dated 12.06.2020 issued in favour of the petitioner were earlier cancelled twice by the authorities. The first cancellation order was issued on 01.12.21020, just hardly after about 6 (six) months from the date of issue of the work order only on the ground that the petitioner failed to start execution of the work within the period stipulated under clause (2) of the terms and conditions of the work order. The second cancellation order was issued on 29.12.2021 without assigning any reason whatsoever. The authorities subsequently revoked both the cancellation orders suo moto, thereby indicating that the authorities did not find any justifiable reasons for cancelling the said work orders. For the third time, the authorities again cancelled the work orders issued in favour of the petitioner by issuing the impugned order dated 26.04.2022. The reason for the cancellation was that the petitioner failed to start execution of the works despite the lapse of more than 18 months and the petitioner had breached the conditions under Clause (2) of the terms and conditions of the work orders. The authorities were also of the view that the reasons given by the petitioner in his written reply to the show cause for not starting the work has no relevancy

[23] On careful examination of the terms and conditions provided under the work orders, this Court is of the considered view that Clause (2) does not provide that the starting date of the work is the essence of the contract and that failure to strict adherence thereto would attract cancellation of the contract. It is only under Clause (3) where there is condition for cancellation of the work, if 50 percent of the work is not executed within the allotted time of 12 months. In the present case, the cancellation

of the work orders was not for breach of the condition under Clause (3) of the terms and conditions of the work orders. Accordingly, this Court is of the considered view that the grounds given by the authorities for cancellation of the works are unreasonable, arbitrary and ultra vires the terms and conditions provided under the work orders.

[24] In the present case before issuance of the first cancellation order dated 01.12.2020, the petitioner requested the concerned authorities of the government for providing necessary technical guidance and selection of work site for starting the contract works, however, instead of providing the necessary technical guidance and selection of work site, the authorities, in a most arbitrary manner issued the first cancellation order. In fact till today, the constructions of the buildings of Staff quarters, Science Block, Hostel Blocks etc., have not yet started by the other contractors, hence, it will be impossible for the petitioner to start the work of water supply and sanitary installation, internal electrification, etc., in the buildings which are yet to be constructed and the authorities have not also provided the necessary technical guidance and selection of work site to enable the petitioner to start execution of works despite the repeated request made by the petitioner. In view of this factual aspects, this Court is constrained to hold that the authorities have acted unreasonably and arbitrarily in accusing the petitioner that he failed to start execution of the work despite lapses of more than 18 months, when the fault lies with the authorities.

[25] The sequence of events starting from issuance of the first cancellation order leading to the cancellation of the work

orders for the third time on the same invalid and unreasonable ground and subsequent issuance of the fresh NIT indicates that the authorities do not want the petitioner to execute the work at any cost. The work orders which have been lawfully awarded to the petitioner after fulfilling all the legal norms and requirements cannot be cancelled at the whims and fancies of the authorities. There should be a reasonable justification for the cancellation and absence of any reasonable justification will render the official action unlawful and illegal.

[26] Only in the counter affidavit filed by the respondents, a new ground had been introduced by the respondents for cancelling the work orders awarded to the petitioner. It had been stated by the respondents in their counter affidavit that the authorities issued similar work orders to other contractors for executing the work of Water Harvesting and Solar Pumps Installation in the same 3 (three) EMRS at Tamenglong, Sapermeina and Tengnoupal during the same period of pandemic of Covid – 19 and that the other contractors successfully executed the said works within the prescribed period for completion of the works, whereas the petitioner failed to execute the work awarded to him. It has also been stated that if the other contractors can execute the work during the period of Covid pandemic, the petitioner cannot take the plea that he could not execute the work awarded to him because of the pandemic of Covid – 19, which shows that the petitioner does not want to execute the works. These new grounds were never mentioned by the authorities in the impugned order dated 26.04.2022.

In my considered view, the validity of the impugned order must be judged on the basis of the reasons mentioned

therein and the new grounds introduced by the respondents in their counter affidavit cannot be entertained while judging the validity of the impugned order. In this regard, we can gainfully rely to the principle of law laid down by a constitution bench of 5 (five) Judges of the Hon'ble Apex Court in the case of **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.** reported in **(1978) 1 SCC 405** wherein it is laid down as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. In Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

[27] For the findings and reasons given hereinabove, the present writ petitions are allowed by quashing the impugned order dated 26.04.2022 and the impugned NITs dated 11.05.2022. The respondents are further directed to allow the petitioner to execute the works awarded to him under the work

orders dated 12.06.2020 by rescheduling the time period for execution of such works as expeditiously as possible.

With the aforesaid directions, the present writ petitions are disposed of. Parties are to bear their own cost.

JUDGE

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