

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 72 of 2023

Date of Decision: 11.09.2023

Smti Ridalin Law

Vs.

Jaintia Hills Autonomous
District Council & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)

:

Mr. S. Sen, Adv. with
Ms. S. Shallam, Adv.

For the Respondent(s)

:

Dr. N. Mozika, Sr. Adv. with
Ms. S. Rumthao, Adv.

i) Whether approved for reporting in
Law journals etc.:

Yes/No

ii) Whether approved for publication
in press:

Yes/No

JUDGMENT AND ORDER

1. The instant writ petition is a second round of litigation before this Court wherein, in the first round, the petitioner though

being the highest bidder to operate a check station at Mookyndur, the same was rejected by the respondent District Council, and instead was settled with one Rudolf G. Kyndiah. This Court on the challenge to the rejection, had allowed the writ petition by quashing the impugned order of settlement, and had further directed the respondents to re-examine the requirements and norms for setting up a revenue station before taking any further decision on the work order. The respondents thereafter on a re-examination of the matter, vide order dated 26.10.2022, allotted the check station to the petitioner on the condition that the petitioner make arrangements for suitable land to set up the check gate, which the petitioner contends was duly complied with. However, the respondents purportedly due to a legal notice issued by the earlier unsuccessful second highest bidder namely; Rudolf G. Kyndiah, cancelled the order dated 26.10.2022. Further, the respondents then took a decision to run the check gate departmentally by leasing a plot of land at Khliehtyrshi, which was at some distance from Mookyndur the original location of the check gate. The writ petitioner being aggrieved thereby, is before this Court seeking appropriate directions.

2. Mr. S. Sen, learned counsel for the petitioner, submits that the actions of the respondents was with a view to circumvent the

order of this Court, and even their own order dated 26.10.2022, whereby the settlement had been made in favour of the petitioner. It is also submitted that the reason for cancellation of the petitioner's allotment, based on the legal notice issued by Rudolf G. Kyndiah, is without any basis, inasmuch as, as his settlement had been cancelled by this Court, in the earlier round of litigation, he no longer had any locus, to question the settlement made in favour of the petitioner. The learned counsel has contended that the respondents to cover up this illegality, have now sought to bring out additional reasons for cancellation of the order of settlement of the petitioner in the affidavit-in-opposition, when such grounds were never present in the impugned order dated 16.03.2023. This he submits is impermissible and has been done as an afterthought.

3. On another limb of submission, it has been submitted that as per the condition set by the respondents, the petitioner had obtained on lease, the same plot of land, which had been found suitable when the lease was settled with the said Rudolf G. Kyndiah, and as such the cancellation has therefore been made with an oblique motive to deprive the petitioner of the contract.

4. The learned counsel has also questioned the entire decision process, and submits that the intention of the respondents

was to frustrate the contract and to circumvent the orders of this Court by removing the cause of action by relocating the site of the check point to Khliehtyrshi. By this arbitrary decision he submits, the intention was to make it appear that the tender had been abandoned, and that the respondents, were operating the check station departmentally at a different location. Moreover, it is submitted, the petitioner was not afforded an opportunity of hearing before the impugned order of cancellation dated 16.03.2023 was passed, whereby the decision of the Executive Committee in its meeting held on 14.03.2023 was communicated. In support of his arguments, the learned counsel had relied on the case of *Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.* (1978) 1 SCC 405 and in the case of *Uflex Limited vs. Government of Tamil Nadu & Ors.* (2022) 1 SCC 165.

5. Dr. N. Mozika, learned Senior counsel assisted by Ms. S. Rumthao, learned counsel on behalf of the respondents submits that pursuant to the order dated 26.09.2022 passed in WP(C) No. 29 of 2022, as per the directions of this Court, on a re-examination of the matter, the contract was settled in favour of the writ petitioner but however, due to subsequent developments wherein the respondents, received a legal notice from Rudolf G. Kyndiah, and it was

discovered that the plot of land offered by the writ petitioner was the same land offered by the said Rudolf G. Kyndiah, it was decided to recall the order dated 26.10.2022, to avoid fresh litigation. It has been further submitted, that the said plot of land was later found not feasible, due to increased traffic congestion and VIP movement on the national highway. On this ground therefore, he submits, the respondents took a decision to take on lease a plot of land at Khliehtyrshi for setting of the check point and to run the same departmentally, and in pursuance to this decision, had vide a communication dated 24.03.2023, appointed an agent namely Shri Sevenborn Tang to operate the check station for a period of 5 years. With regard to the objections of the counsel of the petitioner to the additional grounds taken in the affidavit to supplement the reasons for cancellation, the learned Senior counsel has asserted that the same is untenable, inasmuch as, a State within the meaning of Article 12 of the Constitution is not required to give reasons at every stage, while rejecting tenders and Courts must give 'fair play in the joints' in matters of contract. In support of his arguments, the learned Senior counsel has relied in the case of *Silppi Constructions Contractors vs. Union of India & Anr.* reported in (2020) 16 SCC 489.

6. Heard learned counsel for the parties.

7. The complaint of the writ petitioner as to the shoddy treatment that has been meted out to her, in spite of being the highest bidder for the contract appear to be genuine and has some basis, inasmuch as, the tender has been abandoned by the respondents, divesting the petitioner of her valuable right to the contract. Judicial review in such matters which are commercial in nature, only take place when there is overwhelming evidence of arbitrariness, bias or irrationality. In the instant case, it cannot help but be noticed that the writ petitioner has surely been discriminated against by the actions of the respondents.

8. In this regard, first on the allotment being granted to her on 26-10-2022, the petitioner as per the condition had leased out the plot of land which had undeniably been found suitable in the earlier occasion for establishment of the check station, but the same was withdrawn on the basis of a legal notice of one Rudolf G. Kyndiah. The apparent reason for the same was to avoid future litigation, which is absurd, inasmuch as, the said Rudolf G. Kyndiah is not party to, or part of the award of the contract to the petitioner, and therefore, lacks any locus to question the same. Secondly, arbitrariness, is writ large as the writ petitioner before the cancellation was not intimated nor, given any opportunity to represent against the same. Thirdly, the decision to

abandon the entire contract and to operate the same departmentally by appointing an agent does not appear to be rational, but rather as contended by the petitioner, made with a view to circumvent the entire process and to render the order of settlement useless and redundant.

9. In the backdrop of the facts as aforementioned, however, certain other aspects have also to be taken into consideration. The re-examination, the settlement with the petitioner and the cancellation, it is noted has been attributed only to the location of the check station which was found unsuitable. The evaluation and the award of contract are essentially commercial functions where the principles of fairness and natural justice have limited applicability, as such, the Courts therefore, have to discern on the facts of a particular case if the decision regarding the award of contract is made in good faith and public interest, and will refrain from exercising the power of judicial review, even if there are certain procedural irregularities, evaluation errors or potential loss to a tenderer.

10. This Court in the earlier round of litigation i.e., WP(C). No. 29 of 2022, in its order dated 26-09-2022, while setting aside the appointment of respondent No. 7 as agent for the check station at the earlier location at Mookyndur, had directed that the respondents have

a relook at the requirements and specific criteria to meet the norms of setting up toll stations. It now appears that, they by their impugned actions have instead chosen to abandon the entire process of award of contract to private individuals, by running the check station departmentally at the new location at Khliehtyrshi, which is stated to be at a distance of 5 km from Mookyndur.

11. This subsequent development no doubt, has changed the entire complexion of the case and has given rise to a new cause of action, which is not covered by the pleadings made in the instant writ petition, which are confined only to seeking directions to formally appoint the writ petitioner as agent to operate the check station at Mookyndur, and for execution of a formal agreement as per the decision of the respondents dated 26-10-2022. The directions as prayed in the considered view of the Court, inspite of the sequence of events that reflects a flawed decision making process in awarding and thereafter cancelling the settlement of the petitioner without hearing her, are in the present circumstances however, no longer available for consideration. Coupled with this fact, is the presence of the element of disputed facts, especially with regard to the decision to relocate the check station based on the evaluation as to its suitability, and the operation thereof, departmentally by the respondents.

12. What cannot be ignored, however, is the manner in which the entire exercise which had commenced from the award of contract in the initial stage to the second highest bidder, which was cancelled by orders of this Court, the subsequent events of settlement of the contract with the petitioner, and the recalling of the same by the impugned orders, and finally the abandonment of the entire tender process, by resorting to change of location and operation by the respondents themselves, which does not bode well for a constitutional authority such as the JHADC. The writ petitioner by the actions of the respondents has therefore, been put to unnecessary harassment and undoubtedly, also pecuniary loss. Though cost is normally awarded against petitioners or plaintiffs who engage in frivolous or vexatious litigation, the present case in the facts and circumstances thereof, however, call for exemplary cost to be inflicted upon the respondent JHADC, for the arbitrariness shown in the entire decision making process.

13. Accordingly, it is directed that the respondent JHADC through the Secretary of the Executive Committee pay a cost of Rs. 2(two) lakhs to the writ petitioner within a period of 15(fifteen) days from the date of this order.

14. As ordered above, the writ petition stands closed and disposed of.

JUDGE

Meghalaya
11.09.2023
"V. Lyndem-PS"

