

Serial No. 31
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 331 of 2022

Date of Decision: 18.05.2023

M/S Kampung Kamyar Trading Co. Vs. Union of India & Ors.

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv. (For R 1 & 2)
Mr. B. Bhattacharjee, AAG with
Ms. Z.E. Nongkynrih, GA (For R 3).

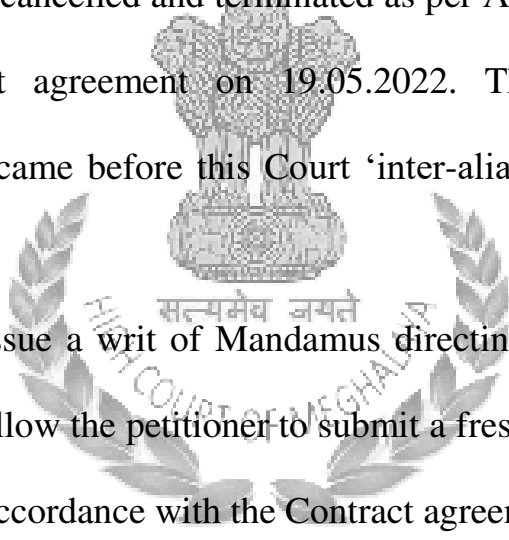
i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The petitioner was a successful bidder for the construction of Jowai By-pass connecting NH-40E at KM 214.00 and NH-44, including construction of bridge in the State of Meghalaya. After award

of the contract on 08.11.2021, the petitioner after commencing work was issued a show cause notice on 13.05.2022 by the respondents, for submission of a fraudulent document, namely the Performance Bank Guarantee in the bidding process, which was in violation of the Contract agreement. The contract was thereafter suspended and after receipt of the show cause, wherein the writ petitioner acknowledged the submission of the forged Bank Guarantee, blaming it on his attorney, the contract was cancelled and terminated as per Article 22, clause 22.1 of the Contract agreement on 19.05.2022. The petitioner being aggrieved, then came before this Court 'inter-alia' with the following prayers.

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- i. issue a writ of Mandamus directing the respondents to allow the petitioner to submit a fresh Bank Guarantee in accordance with the Contract agreement.
 - ii. and further direct the respondents to take a joint measurement for the quantity of work executed by the petitioner and to pay accordingly.
 - iii. stay the impugned NIT dated 21.07.2022 and the Corrigendum dated 31st August, 2022.

2. In the course of the proceedings, and as the project had since been re-tendered, and the petitioner firm in the meantime blacklisted,

the writ petitioner abandoned the other prayers sought for in the writ petition and limited the relief claimed, only for issuance of a direction to the respondents to measure the work that has been completed by him and to make necessary payment.

3. Mr. P. Yobin, learned counsel for the petitioner has submitted that, the petitioner had on the award of the contract mobilized resources and has also executed substantial amount of the work before the contract was terminated. He submits that, notwithstanding any other consideration, at least for the completed works, the petitioner is entitled to payment for the same. He further submits that, this can easily be carried out by the respondents (PWD), to ascertain and verify the completed work and to fix the amount payable to the petitioner.

4. Mr. B. Bhattacharjee, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA for the State respondents No. 3 submits that, the prayer made is unsustainable, as the contract at clause 4.1, has clearly stipulated that, in the event, a bidder directly or indirectly engages in corrupt or fraudulent practice, the respondents are entitled to forfeit and appropriate the performance security, as the case may be as damages without prejudice to any other right available. It is further submitted that, the question of determination of the work completed or whether the petitioner is entitled to any payment, is not a question that

can be gone into in a writ proceeding, as it involves disputed questions of fact.

5. Dr. N. Mozika, learned DSGI assisted by Ms. S. Rumthao, learned counsel for the respondents No. 1 and 2 has also agreed and reiterated the submissions made by the learned AAG.

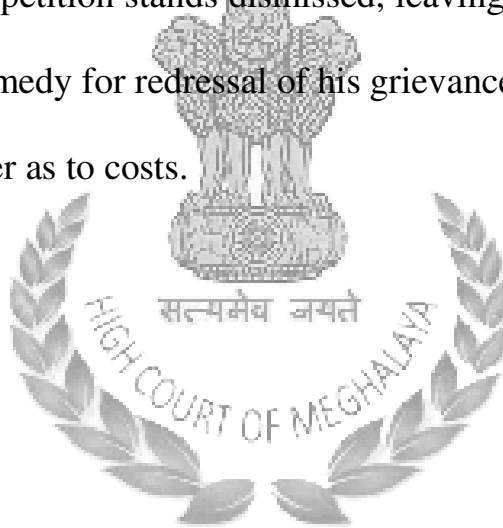
6. This Court having heard the learned counsels for the parties, and having examined the materials on record, taking into consideration the limited prayer of the petitioner, at this stage is only to consider, as to whether the same would be maintainable in the circumstances aforestated.

7. It is noted that, the exercise to determine the extent of work completed in any project involves physical verification, documentation in the form of measurement books and the concurrence and approval of the owner of the project on the bills submitted by the contractor. In the instant case, no materials have been placed on record to show that, there is any confirmation from the side of the respondents as to the extent of work completed. The bill annexed by the writ petitioner to show work completed at Annexure – IX to the writ petition, also does not bear any official endorsement from the office of the respondents nor any acknowledgement. The claim of the writ petitioner therefore,

lying in the realm of disputed facts, it is not possible for this Court sitting in writ jurisdiction to determine the claims as made.

8. In this view of the matter, and as even the limited and condensed prayer cannot be effectively adjudicated in a proceeding under Article 226 of the Constitution, as there is the involvement of disputed facts, apart from the fact that, there is effective alternate remedy available to the writ petitioner before the competent Civil Courts, this writ petition stands dismissed, leaving the writ petitioner to seek alternate remedy for redressal of his grievances.

9. No order as to costs.



Judge

Meghalaya
18.05.2023
"D.Thabak-PS"