

Serial No. 14
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 280 of 2023

Date of Decision: 04.10.2023

Shri Uttam Saha

Vs.

Union of India & Ors.

Coram:

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

Appearance:

For the Petitioner(s) : Mr. M.L. Nongpiur, Adv.

For the Respondent(s) : Mr. R. Debnath, CGC

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| 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. An affidavit has been filed by the respondents today, wherein it has been indicated that the earlier adverse remarks on the workload returns (WLR) are no longer significant and that in fact, by the order dated 16.09.2023, the writ petitioner has been awarded a

fresh contract amounting to Rs. 4, 62,81,960/- (Rupees Four Crores Sixty Two Lakhs Eighty One Thousand Nine Hundred Sixty only).

2. Mr. R. Debnath, learned CGC for the respondents submits that the very fact that fresh contract has been awarded to the writ petitioner is testimony to the fact that the purported alleged adverse remarks were not taken into consideration and no longer have any significance. He therefore, submits that the matter has since been rendered infructuous, as fresh review for the pending contract is yet to be conducted and report released.

3. Mr. M.L. Nongpiur, learned counsel for the petitioner has however submitted that the very reason for the petitioner approaching this Court is that, before issuance of the adverse remarks on the workload returns for the quarter ending March, 2023, no show cause notice was issued to the petitioner as mandated by the ***Military Engineering Service Manual on Contracts, 2020 (Quarterly workload returns (WLR) (Annexure P-2, Part I & II)***. He therefore, submits that notwithstanding the fact the report for the quarter ending has since elapsed, the adverse entries having a detrimental effect on the track record of the petitioner, the same should be expunged.

4. I have heard the learned counsels for the parties, especially the submissions made by Mr. R. Debnath, the learned CGC that the WLR reports that were made for the quarter ending 2023 are no longer significant, inasmuch as, a fresh tender has also been awarded to the petitioner, which shows that the performance of the writ petitioner is up the mark. This Court also has examined the Manual on Contracts, 2020, wherein at clause 32.2 (vii) & (viii), it has been provided as follows:-

“32.2 Monitoring and preparation of reports and returns shall be done as under:

(vii) Show cause notices for proposed adverse remarks in workload returns shall be served by the Accepting Officer of Contracts latest by 10th of the last month of the quarter and copy of the same alongwith reply of Contractors shall be enclosed with WLR by GE/CWE, while forwarding report to CE Zone, and by CE Zone to CE Command.

(viii) In the forwarding letter of the WLR to higher formation, there shall be specific mention that against the contractor who have then adversely remarked, necessary show Cause Notices (SCNs) have been issued to the contractors, replies received from contractors and replies analysed before putting the adverse remark.”

5. A perusal of the above provision, clearly indicates that before any report is generated especially if the same is adverse, a

show cause notice should be issued to the petitioner to enable him to reply to the same.

6. In the present case, this episode is no longer significant in view of the issuance of the fresh tender. Accordingly, the remarks made in the impugned letter 27.07.2023, as also by the letter dated 11.08.2023, shall stand expunged from the record.

7. There being no other issue for consideration, this matter is accordingly disposed of.



JUDGE

Meghalaya
04.10.2023
"V. Lyndem-PS"