

GAHC010009822021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/49/2021

M/S J.A. BROTHERS
A PROPRIETARY FIRM, REP. BY SRI JAMES AKHAM, THE PROPRIETOR OF
M/S J.A. BROTHERS REGD. OFFICE ADDRESS- JINENDRA TOWER, OLD
DAILY MARKET, P.O. DIMAPUR-797112, NAGALAND.

VERSUS

SH. D S RANA AND 5 ORS
(CHAIRMAN AND MANAGING DIRECTOR) ENGINEERING PROJECT
(INDIA) LTD., A GOVT. OF INDIA ENTERPRISE, CORE-3, CGO COMPLEX, 7,
INSTITUTIONAL AREA, LODHI ROAD, NEW DELHI-110003

2:UTPAL PATOWARY
(AGM)
ENGINEERING PROJECT (INDIA) LTD. A GOVT. OF INDIA UNDERTAKING
NORTH EAST REGIONAL OFFICE
4TH FLOOR
HINDUSTAN TOWER
JAWAHAR NAGAR
NH37 GUWAHATI-781022.

3:SH. RATNESH JAIN
(GROUP GENERAL MANAGER) (PREVIOUSLY GENERAL MANAGER
CONTRACTS) ENGINEERING PROJECT (INDIA) LT.
A GOVT. OF INDIA UNDERTAKING
NORTH EAST REGIONAL OFFICE
4TH FLOOR
HINDUSTAN TOWER
JAWAHAR NAGAR
NH37 GUWAHATI-781022.

4:SH. S R LAHIRI

(DY. GENERAL MANAGER-TECH) (IN CHARGE OF TRIPUR AND
MIZORAM) ENGINEERING PROJECT (INDIA) LT.
A GOVT. OF INDIA UNDERTAKING
KRISHNA NAGAR
AGARTALA
TRIPUR
799002 AND ENGINEERING PROJECT (INDIA) LTD.
A GOVT. OF INDIA UNDERTAKING
M/12 VENGLAI CHALTLANG
P.O. AIZAWL-796012.

5:SH. RADHAMADHAB HATI
(SITE OFFICER IN CHARGE) THE SITE ENGINEER AND PROJECT
ENGINEER
EPIL SITE OFFICE DIMAGIRI
TIABUNG
DIST. LUNGLEI
MIZORAM.

6:SH. T.V. N. RAO
(EXECUTIVE DIRECTOR) ENGINEERING PROJECT (INDIA) LTD. A GOVT.
OF INDIA UNDERTAKING
NORTH EAST REGIONAL OFFICE
4TH FLOOR
HINDUSTAN TOWER
JAWAHAR NAGAR
NH37 GUWAHATI-781022

Advocate for the Petitioner : MS. K JAIN

Advocate for the Respondent : MR A BHUYAN (R-2)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 03-08-2023

Sri S A Sikdar, learned counsel has prayed for an adjournment on behalf of his senior Sri R Gopal.

A matter alleging contempt being essentially one between the Court and the alleged contemnor, the prayer for adjournment is rejected.

The order which has been alleged to be violated is dated 30.09.2020 passed by this Court in I.A.(Civil) No. 1346/2020 arising out of FAO No. 27/2020.

The present respondents are the officers of Engineering Project (India) Limited [in short, EP(I)L]. It appears that the Ministry of Home Affairs, Government of India has entrusted the work of construction of 13 (thirteen) numbers of Boarder outposts in the State of Mizoram bordering Bangladesh. EP(I)L was also authorized to get the works done through tender process.

Pursuant to the same, one of the work for Border outposts was allotted to the present petitioner. There were disputes with regard to the work in question wherein the principal contention of the respondents is that though the work was to be completed within a period of 18 (eighteen) months, even after 35 (thirty five) months, the work was not completed and accordingly, the contract was terminated. The said termination was the subject matter of a suit instituted before the Civil Judge No. 1, Kamrup(M) at Guwahati.

Sri Goswami, learned counsel for the respondents submits that the Courts at Guwahati was not having any territorial jurisdiction as the works pertained to Mizoram and the jurisdiction was conferred upon the competent Court at Delhi. He however submits that despite such facts and circumstance, an order of injunction was passed directing that no fresh tender process be issued. The said order dated 30.11.2018 is the subject matter of challenge in the connected FAO. Along with the said appeal, I.A. (Civil) No. 1346/2020 was filed to allow the respondents to go for re-tendering as the work in question was of immense public importance and delay was against the interest of country as a whole.

This Court by the order dated 30.09.2020 had disposed of the said

interlocutory application by passing the following directions:

“.....I am inclined to stay the operation of the impugned order dated 20.12.2019 passed I Misc(J) Case No. 882/2018 arising out of T.S No.527/2018 pending in the court learned Civil Judge No. 1, Kamrup(M) at Guwahati and the petitioners shall go ahead with fresh tender process without applying the risk and cost liability on the respondent contractor till the disposal of the connected appeal and the same shall be considered at the time of disposal of the appeal.

The necessary formalities before handing over the site to prospective fresh contractor/contractors shall be maintained by the petitioners as per the terms and condition of the contract entered into by the petitioner and the respondent contractor.”

This order dated 30.09.2020 has been challenged in this contempt petition which has been alleged to have been violated.

A perusal of the present petition would reveal that the allegations of violation are mainly in paragraphs 34 and 37 which are extracted herein below:

“34. That it is relevant to point out her that the General condition of contract in its clause 72.4.1 sub clause (e) is very much clear that before handing over the work performed by the contractor has to be measured, till date no data of the quantum of works performed by the Applicant/Plaintiff was sent to the Applicant/Plaintiff. If the work is not measured the Applicant/Plaintiff would be deprived of his due amount for his performance of work. This is against the order passed by this Hon'ble Court on 30.09.2020.

37. That on 05.10.2020 Assistant General Manager, Engineering Project Ltd at Guwahati imposed liquidated damages of Rs.5,64,85,38604 (Rupees five crores sixty four lakhs eighty five thousand and three hundred eighty six and paise four, being 10% of the value of work, i.e. 56,48.53,863/- This is absolutely beyond contractual obligation. The employer of contractor has not been authorized to impose liquidated damages in the event of termination of contract. That part this inconsistent with the order passed by this Hon'ble Court on 30.09.2020 whereby the contract awarding authority was allowed to go ahead with the tender without imposing risk and cost. Separate application is filed to assail this action of imposing liquidated damages.”

Sri Goswami, learned counsel for the respondents has drawn the attention

of this Court to the order dated 17.02.2022 wherein this Court had come to a *prima facie* satisfaction that the present petition alleging contempt was not maintainable. However, on the request of the parties, the matter was adjourned.

Examination of the averments pertaining to the allegation of contempt as stated in paragraphs 34 and 37 does not bring this Court to even a *prima facie* satisfaction that there has been any violation of the order dated 30.09.2020. The averment made in paragraph 34 is with regard to certain function to be conducted before handing over the work performed by the petitioner. In paragraph 37, the petitioner has stated regarding imposition of liquidated damage. This Court is of the considered opinion that neither of the said allegations, even on its face value can be deemed to be in violation of the order dated 30.09.2020.

Sri Goswami, learned counsel has also informed this Court that the matter regarding imposition of liquidated damage has been separately challenged by the petitioner by filing a writ petition being WP(C) No. 391/2021 and therefore, the said matter is the subject of adjudication in a different proceeding. Sri Goswami, learned counsel has also submitted that allotting the contract to a third party after the permission was granted by the Court in which a risk and cost clause was included is *qua* the third party and has nothing to do with any such risk and cost with relation to the present petitioner. He has also drawn the attention of this Court to the communication dated 05.10.2020 whereby it has been clearly stated that the matter of risk and cost is the subject matter of the outcome of the appeal. This Court has also been informed that due to the change in territorial jurisdiction, the appeal has now been remanded back to the learned District Judge, Kamrup(M).

A party alleging contempt has to make out a case of willful and deliberate

violation of a Court's order. In the instant case, there does not appear to be any violation of the order at all and the present attempt of filing a contempt appears to be lacking *bona fide*.

Petition is accordingly dismissed.

JUDGE

Comparing Assistant