



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
KOHIMA BENCH

WP(C)/247/2023

NAGALAND CONTRACTORS AND SUPPLIERS UNION AND ANR
REPRESENTED BY ITS VICE PRESIDENT SHRI HOSHITO ASSUMI
S/O VEHATO ASSUMI
R/O PANCHAYAT LOWER CHANDMARI COLONY
KOHIMA NAGALAND-797001

2: SRI TALI SANGTAM
S/O LATE NUNGSHIMGREN SANGTAM
SECRETARY OF NAGALAND CONTRACTORS AND SUPPLIERS' UNION. R/O
BAYAVU HILL KOHIMA NAGALAND-797001

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT OF
NAGALAND

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF NAGALAND
PWD (R AND B) NAGALAND KOHIMA

3:THE CHIEF ENGINEER
PWD (R AND B) AND EMPOWERED OFFICER NGRDA
NAGALAND KOHIMA

4:THE STATE LEVEL STANDING COMMITTEE(PMGSY)
REPRESENTED BY THE CHIEF SECRETARY GOVT.
OF NAGALAND

5:THE SECRETARY TO THE GOVT. OF NAGALAND
MINISTRY OF RURAL DEVELOPMENT
KRISHI BHAVAN

DR. RAJENDRA PRASAD ROAD
NEW DELHI-110001

6: MAGNU ENTERPRISES
CICRCULAR ROAD DIMAPUR NAGALAND REGD. NO. NPW/CLASS-1/451
REPRESENTED BY SHRI AVIKHU ZHIMOMI

7:M/S SARAMATI CONSTRUCTION
NEW MINISTER HILL KOHIMA NAGALAND REGD. NO. NPW/CLASS-1/356
REPRESENTED BY SHRI BENDANG

8:M/S I.K. SHOHE AND SONS
THILIXU VILLAGE, DIMAPUR, NAGALAND, REGD. NO. NPW/CLASS-1/542
REPRESENTED BY SHRI. IHOTO K SHOHE

9:M/S SN ENTERPRISES
HEBRON-14, PHEK TOWN NAGALAND, REGD. NO. NPW/CLASS-1,
REPRESENTED BY SHRI. SHEVOHU NEINU

10:M/S VIPE ENTERPRISES
KOHIMA NAGALAND REGD. NO. NPW/CLASS-1/897
REPRESENTED BY SHRI KUPUTO SHOHE

11: M/S LPSS INFRA
KOHIMA NAGALAND REGD. NO. NPW/CLASS-1/52
REPRESENTED BY SHRI ABEL P SHOHE

12:SHRI P EANGHUK KONYAK
SHANTHAM WARD H.NO.D.D.T.414 MON TOWN, NAGALAND REGD. NO.
NPW/CLASS-1/1051, REPRESENTED BY SHRI P EANGHUK KONYAK

13: NAGA CONSTRUCTION
SB-36, NAGA SHOPPING ARCADE, DIMAPUR, NAGALAND, REGD. NO.
NPW/CLASS-1/462, REPRESENTED BY SHRI HUKIYE N TISSCA

14:M/S N. CHISHO AND SONS
REGD. NO. NPW/CLASS-1/485, REPERESNTED BY SHRI SNDY SWU

15:M/S MULTI BUILDERS
REGD. NO. NPW/CLASS-1/495, REPERESNTED BY SHRI HOWOTO JAKHALU

For the Petitioner(s) : Mr. K. N. Choudhury, Sr. Advocate
: Mr. A. Zho, Advocate

For the Respondent(s) : Mr. T. B. Jamir, Government
Advocate
: Mr. Yangerwati, CGC
: Mr. Limawapang, Advocate

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date: 15.12.2023

Heard Mr. K. N. Choudhury, the learned Senior counsel appearing on behalf of the Petitioners in WP(C) No.206/2023 and WP(C) No.247/2023. I have heard Mr. A. Zho, the learned counsel who also represents the said Petitioners. Mr. T. B. Jamir, the learned counsel appears on behalf of the Respondent Nos. 1 to 4; Mr. Yangerwati, the learned CGC appears on behalf of the Union of India and Mr. Limawapang, the learned counsel appears on behalf of the Respondent Nos. 6 to 15.

2. Both the writ petitions are taken up together for disposal by this common judgment and order taking into account the common issues involved.

3. The Petitioner No.1 in both the writ petitions is an association of contractors and suppliers in the State of Nagaland in the name and style of 'Nagaland Contractors and Suppliers Union' and the Petitioner No.2 is its Secretary. This Court has specifically enquired with the learned counsel appearing on behalf of the Petitioners as to whether the said Petitioner No.1 is registered under any provision of law. Mr. A. Zho, the learned counsel for the Petitioners submitted that the Petitioner No.1 is registered under the Societies Registration Act, 1860 as well as with the NPWD.

4. The grievances of the Petitioner Association are the issuance of the Notice Inviting Tender by the Office of the Chief Engineer PWD (R&B) Nagaland, Kohima in the month of August 2023 as well as the Short Tender Notice dated 13.10.2023 issued by the Chief Engineer PWD (R&B) Nagaland under PMGSY-III Batch-1 (2023-24). The specific issue which has been raised is that on earlier occasions, when tenders were issued in respect to the PMGSY-I and PMGSY-II against each package, there used to be one roadwork/package. However, by issuing the impugned NITs, the Respondent Authorities in the State PWD have clubbed the various projects/roadwork into one package. It is the submission of the learned Senior counsel for the Petitioners that the guidelines of PMGSY do not permit the State to have more than one project/roadwork against one each package. But the authorities for vested interest have clubbed various projects/roadwork into one package and thereby the opportunities which the small contractors could have availed, have been deprived of. It is the further submission of the learned Senior counsel for the Petitioners that clubbing of various projects/roadwork into one package is actually not feasible for proper implementation of the work as in the terrain like in Nagaland, it would not be possible to complete such works. In this regard, the learned Senior counsel for the Petitioners have placed before this Court some of the provisions of the Programme Guidelines of PMGSYIII. Amongst the Clauses referred to were Clause 13.5 of the Programme Guidelines of PMGSY-III which stipulated that the execution of the works under the PMGSY-III would be on the lines similar to those PMGSY-I and PMGSY-II. On the basis of the said Clause, the learned Senior counsel for the Petitioners submitted that when the guidelines stipulate that the execution of the work have to be in terms with PMGSY-I and PMGSY-II, the State Authorities ought

to have issued the NITs having one roadwork/project against each package. In that regard, the learned Senior counsel drew the attention of this Court to earlier NIT's where each roadwork was packaged separately.

5. The learned Senior counsel for the Petitioners further drew the attention of this Court to Clause 21.6 of the Programme Guidelines which stipulates that works would be packaged in such manner so as to attract competent contractors with modern machinery and equipment and capable of nurturing small contractors. The learned Senior counsel for the Petitioners on the basis thereof submitted that clubbing of various projects/roadworks into one package would be against the interest of small contractors inasmuch as the small contractors would not be capable of carrying out the works of such magnitude.

6. The learned Senior counsel for the Petitioners further submitted that in terms with Clause 6.4 of the Programme Guidelines, the State Level Standing Committee should consists of various officials from various Departments however, in the instant case as could be seen from the decision taken on 22.08.2023, the State Level Standing Committee did not have the participation from the Rural Development Department, Panchayat Department, Revenue Department and Health Department. In absence of said Departments who are also stakeholders, the State Level Standing Committee's decision on 22.08.2023 to club various roadworks into single packages was not contrary to the Programme Guidelines. The learned Senior counsel for the Petitioners further submitted that it is on the basis of the said decision, the impugned NITs have been issued. Under such circumstances, the learned Senior counsel for the Petitioners

submitted that the impugned decision taken on 22.08.2023 had been put to challenge as the said decision was in violation of the Programme Guidelines of PMGSY-III.

7. On the other hand, Mr. T. B. Jamir, the learned counsel appearing on behalf of the State Respondents submitted that the filing of the instant writ petitions are totally misconceived and in that regard referred to Clause 13.1(ii) of the Programme Guidelines which categorically mentions that a package could comprise of more than one roadwork and as such submitted that irrespective of whether the State Level Standing Committee had decided on 22.08.2023, the same was very much permissible as per the Programme Guidelines. He further submitted that the State of Nagaland is not only adopting the same method of clubbing various roadworks into one package, the same is also done in various other States in India while implementing the PMGSY-III Scheme. In that regard, the learned counsel referred to the affidavit-in-opposition of the State Respondents wherein the Notice Inviting Tenders in the State of Jharkhand (Annexure-R3) and State of Uttar Pradesh (Annexure-R4) shows that similar steps were adopted amongst other States in India.

8. The learned counsel for the State Respondents further submitted that the tendering authority being the author of the tender has the expertise to know what is the actual requirement and as such, the said tender have been issued taking into account the ground situation. It would therefore not be proper on the part of this Court to sit over their decision unless the Petitioners could show arbitrariness or malafide or favouritism. The learned counsel therefore referred to the judgment of the Supreme Court in the case of **Afcons Infrastructure**

Ltd. Vs. Nagpur Metro Rail Corporation reported in **(2016) 16 SCC 818** and more particularly to paragraph No.15. The learned counsel further referred to a recent judgment of the Supreme Court in the case of **TATA Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (Best) and Others** reported in **2023 SCC Online SC 671**. Mr. T. B. Jamir, the learned counsel further submitted that ordinarily a Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether the decision to adopt a particular method was right or wrong unless something very gross or palpable are pointed out. The learned counsel referred to a judgment of the Supreme Court in the case of **M/s Galaxy Transport Agencies, Contractors, Traders Transports and Suppliers Vs. M/s New J.K.**

Roadways, Fleet Owners and Transport Contractors and Others reported in **(2021) 16 SCC 808** wherein the Supreme Court observed at paragraph No.16 that the Court must realize that the authority floating the tender is the best judge of its requirements and therefore the Court's interference should be minimal. The learned counsel therefore submitted that the authority which floats the tender and had authored the tender documents is the best judge as the said authority is in know of the ground realities and as held by the Supreme Court, such decision ought not be the second guessed by the Court in a judicial review proceedings.

9. The learned counsel further submitted that Clause 6.4 of the PMGSY-III Guidelines have been duly complied with inasmuch as the State of Nagaland have different names for the same Department or some Departments are clubbed together taking into account the administrative exigency of the Government of Nagaland. He further

submitted that on all meeting of the stakeholders, all the members may not always be present and that cannot be a reason to say that the State Level Standing Committee do not comprise of the members from the Health Department or the Revenue Department or Panchayat Department.

10. The learned counsel submitted that Clause 21.6 of the Programme Guidelines stipulates two things. First, the contractor has to be competent having modern machineries and the second is for nurturing small contractors. The learned counsel further submitted that in the tender documents which were placed during the course of hearing and more particularly Clauses 7.1 and 7.2 have been specifically inserted thereby providing granting of sub-contracts even without the consent of the employer keeping in mind that the same would nurture small contractors. He further submitted that in the State of Nagaland to attract competent contractors with modern machineries, the tendering authority in its wisdom therefore thought it prudent for the purpose of clubbing certain project/roadworks into one package.

11. Mr. Limawapang, learned counsel appearing on behalf of the private respondents submitted that they were not part of the resolution so taken by some of member of the Petitioner no. 1 Association and as such, the said respondents have duly participated in the tender process. He further drew the attention of this Court to the impugned Notice Inviting Tender of the month of August 2023 issued by the Office of the Chief Engineer PWD(R&B), Nagaland and submitted that for the purpose of attracting competent Contractors with Modern machineries (which costs in the range of more than 3 (three) crores each), the packages cannot be very small packages. He

therefore submitted that the authorities in order to attract competent Contractors with modern machineries have clubbed some road works in a single package. Referring to the said impugned Notice Inviting Tender, he submitted that at Serial No. 1 to 4 there are 4 road works which have been clubbed into one single package and the cost of the said package is 3320.72 lakhs whereas at Serial No. 5, a single package had one single road work of the value of 4614.94 lakhs. The learned counsel therefore adopting the submissions made by Mr. T. B. Jamir, learned counsel appearing on behalf of the State respondents submitted that there being no bar in clubbing of road works as can be seen in clause 13(1) (ii) of the Programme Guidelines, the Respondent State Authorities have done so in the right earnest.

12. Mr. Yangerwati, learned counsel appearing on behalf of the Union of India and representing the Government of India, Ministry of Rural Development submitted that the impugned Notice Inviting Tender and the Short Tender Notice are in terms with the Programme Guidelines and as such, the Ministry of Rural Development had no objection to the same. He further submitted that although the scheme is a Central Government scheme but the implementation agency is the State Government as the State Government would have expertise taking into account the ground realities of the said State.

13. Mr. A. Zho, the learned Senior counsel appearing on behalf of the Petitioners rejoining to the submissions already made submitted that the documents enclosed to the affidavit-in-opposition showing the representation of the Rural Development Department and the Health Department were not in respect to PMGSY Phase III but were in respect to PMGSY Phase I and II. He submitted that in the impugned

decision so taken on 22.08.2023, the said Departments as already contended were not present.

14. Upon hearing the learned counsels for the parties, and perusing the materials on record, two issues arises for consideration: (i) Whether the decision of the State Level Standing Committee held on 22.08.2023 to club various road works into one single package is required to be interfered with?

(ii) Whether the impugned tenders which have been assailed are required to be interfered with in exercise of the jurisdiction under Article 226 of the Constitution?

15. The first issue which has been raised is on the basis of Clause 6.4 of the Programme Guidelines issued by the Ministry of Rural Development. A perusal of the said Clause 6.4 of Programme Guidelines reveals that the State Level Standing Committee set up for the PMGSY-I would continue for the PMGSY-II and PMGSY-III. It also mentions that the State Level Standing Committee would be headed by the Chief Secretary or the Additional Chief Secretary with members of various stakeholders of the programme namely the Secretaries of the Department of Rural Development, Panchayat, PWD, Forest, Social

Welfare, Finance, Revenue, Health, Education and Transport. From the submissions so made by the Petitioners, it reveals that as the State Level Standing Committee who had taken the decision on 22.08.2023 was not composed of all the Departments mentioned in Clause 6.4 of the Programme Guidelines the said decision was contrary to the Programme Guidelines.

16. This Court has duly perused Clause 6.4. A perusal of the said Clause only shows that how the State Level Standing Committee is to be constituted. The said Clause however does not mandate that in all the meetings of the State Level Standing Committee all the Departments mentioned in the said Clause have to be present. The use of the word 'stakeholders' in the said Clause also gives an indication that though the State Level Standing Committee would consist of the various Departments but the concerned stakeholder Departments shall be present in the meetings. This Court also cannot be unmindful of the submissions made by the learned counsel for the State Respondents that the stakeholders of the various departments duly participate as and when their stakes are concerned and as such, the said decision taken on 22.08.2023 for the purpose of clubbing various road works in one package cannot be said to be in violation of the Programme Guidelines.

Be that as it may, even irrespective of the decision of the State Level Standing Committee in the meeting on 22.08.2023, it is the opinion of this Court that Clause 13(1)(ii) of the Programme Guidelines clearly shows clubbing of various road works into a single package is permissible. Therefore, the decision dated 22.08.2023 whether taken or not, the State Authorities could have clubbed various road works into a single package. In fact, a perusal of Annexure-R3 and Annexure-R4 also

shows that in other states also, such clubbing of roadworks/projects have been done into a single package. Further to that, it is also pertinent to note that the Union of India has no objection to such clubbing. Under such circumstances, in the opinion of this Court the challenge to the decision taken in the minutes of the meeting dated 22.08.2023 cannot therefore be said to be in violation to the Programme Guidelines.

17. The second aspect of the matter is as to whether the clubbing of various road works/projects into one single package ought to be interfered with by this Court or in other words should this Court interfere with the impugned NITs. As already noted, the learned Senior counsel for the Petitioners had laid emphasis on Clause 13.5 to advance the submission that it is not permissible to have more than one road work against each package. The said submission is on the basis that when tenders were issued earlier in respect of PMGSY-I and PMGSY-II against each road work, there used to be one single package. At this stage, this Court finds it very pertinent to take note of the submission of Mr. Yangerwati, learned counsel appearing on behalf of the Union of India who submits that the Scheme in question is of the Central Government but the implementation is to be carried out by the State Government. It is also relevant to reiterate that Clause 13.1(ii) of the Programme Guidelines do not bar clubbing. Under such circumstances, it is the opinion of this Court that merely on earlier occasions, the implementing agency had issued tenders of one work against each package, the said cannot be a reason to bar the implementing agency to club different road works against a single package.

18. This Court also finds it relevant to take note of two judgments of the Supreme Court as referred to by Mr. T.B. Jamir, learned counsel appearing on behalf of the State Respondents. The first judgment is **Afcons Infrastructure Ltd.** (Supra) wherein at paragraph 13 and 15, the Supreme Court makes it very clear that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. Paragraph 13 and 15 of the said judgment being relevant is quoted herein under:

“13. In other words, a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decision making process or the decision.

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”

19. The judgment in the case of **M/s Galaxy Transport Agencies, (supra)** observed that it is well settled that unless arbitrariness or mala fide on the part of the tendering authority is alleged and proved, the question of interfering with a decision of the tendering authority should not be second guessed.

20. This Court finds it relevant to observe that the Petitioners have not been able to demonstrate before this Court any material which

would show that the decision of the Respondent State Authorities in clubbing the various projects/road works into a single packages suffers from malafides, intention to favour someone or arbitrariness, irrationality or perversity.

21. This Court also finds it relevant to take note of Clause 21.6 of the Programme Guidelines which stipulates that for the purpose of carrying out the work in question, the implementing agency has to engage competent contractors having modern machineries. It also stipulates that there should be nurturing of small contractors. In this regard, this Court is of the opinion that the submissions so made by the learned counsel appearing on behalf of the State Respondents that in order to attract competent contractors having modern machineries, it is required that the packages in question have to be made attractive. This view of the tendering authority in the opinion of this Court cannot be said to be an arbitrary and unreasonable exercise. The reference drawn to the Clauses 7.1 and 7.2 of the bidding documents, during the course of hearing, also shows that the contractors in question would be at liberty to grant sub-contracts even without the consent of the employer. In the opinion of this Court clubbing of the various road works into single packages on one hand and Clause 7.1 and 7.2 of the bidding documents provides a balance between attracting competent contractors with modern machineries and also nurturing small contractors.

22. Under such circumstances this Court is of the opinion that both the writ petitions are devoid of any merits for which the same stands dismissed. The interim order(s) so passed earlier also stands vacated.

23. Before parting with the records, this Court however observes that taking into account that the Programme Guidelines envisages nurturing

of small contractors, it shall be within the wisdom of the State PWD which is the implementing agency to encourage the contractors who are awarded the packages to grant sub-contracts to small contractors.

Sd/-

J U D G E

COMPARING ASSISTANT