

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) No.565 of 2023

M/S United Construction

..... *Petitioner(s)*

V E R S U S

State of Tripura and others

..... *Respondent(s)*

For Petitioner(s) : Mr. T.D. Majumder, Sr. Advocate,
Mr. Tapash Halam, Advocate.

For Respondent(s) : Mr. Karnajit De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH

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22.05.2024

Heard Mr. T.D. Majumder, learned senior counsel assisted by Mr. Tapash Halam, learned counsel appearing for the petitioner. Also heard Mr. Karnajit De, learned Additional Government appearing for the State-respondents.

[2] A letter of acceptance (LOA) was issued on 6th December, 2022 (Annexure-8) by the Executive Engineer, Sonamura Division, PWD (R&B), Sepahijala, Tripura in favour of the petitioner on acceptance of his tender, on behalf of the Governor of Tripura at the quoted tendered amount of Rs.2,40,81,067.00 which was 2.70% below the estimated cost of tender of Rs.2,47,49,298.00 under a DNIT No.86/CE/PWD(R&B)/SE (P&DU)/2022-23 dated 28th September, 2022 in respect of the work of strengthening of road from Mayarani to Bgamara (upto Melaghar-Bishramganj road) under Sonamura Constituency Assembly (L-5.80 km). There were two bidders in the fray in which the petitioner turned out to be successful. Petitioner was

asked to submit the performance guarantee of Rs.12,04,053/- within 10 days i.e. 16th December, 2022 which was submitted on 17th December, 2022. The letter also indicated that on receipt of the prescribed performance guarantee, necessary letter to commence the work shall be issued and the site of work will be handed over to the petitioner thereafter. The letter further indicated that this notification concludes the legally binding contract between the petitioner and the Government of Tripura till issue of a formal contract. Upon submission of the performance guarantee the letter for commencement of work was issued in favour of the petitioner on 21st December, 2022 (Annexure-10) by the same Executive Engineer. The contents of the letter for commencement of work once again indicates the nature of work, the estimated work put to tender, the quoted tender value, the percentage of rate and time for completion i.e. 360 days. Petitioner was requested to contact the SDO, PWD(R&B), Melaghar Sub-Division for taking possession of work site and starting the work at once. In continuance of the letters referred to above, he was requested to attend the office of the Executive Engineer to complete the formal agreement within 7 days from the date of issue of this letter. It was further indicated that the LOA will be a part of the agreement.

[3] Petitioner claimed to have commenced the work but was surprised to receive the corrigendum issued by the same officer on 12th January, 2023 by which the letter of acceptance dated 6th December, 2022 and letter for commencement of work dated 21st December, 2023 were cancelled. The corrigendum at (Annexure 12) is reproduced hereunder:

“Government of Tripura
Office of the Executive Engineer
Sonamura Division, PWD(R&B)
Sonamura, Sepahijala Tripura

CORRIGENDUM

As per recommendation of the Technical/Financial Bid Evaluation Committee of PWD(R&B) in the 2nd meeting held on 5th December, 2022 at 11.00 AM in the chamber of the Chief Engineer, PWD(R&B), Tripura for Re-Evaluation of the Technical/Financial Bid and review of the earlier technical/Financial Bid in the 1st meeting of the committee communicated vide No.F.29(4)-ACE(P&DU)-PWD(R&B)-2022/5341-44 dt.03.12.2022 for the work “Strengthening of road from Mayarani to Bgamara (upto melaghar-Bishramganj road) under Sonamura Constituency Assembly (L-5.80 km)”. vide DNIeT No.86/CE/PWD (R&B)/SE (P&DU)/2022-23 PNIeT No: 18/EE/SNM/PWD/2022-23, Dt. 28-09-2022 Circulated Memo No. F.10(17)/EE/SNM/PWD/3910-82, Dt. 28.09.2022. Tender ID: 2022_CEPWD_32587_1.

On review of the decision of the 1st meeting of the committee and after re-evaluation of the tenders it has been decided by the committee to cancel earlier decision communicated on 03.12.2022 recommending lowest tender of M/S United construction for acceptance by the competent authority.

Therefore, the Letter of Acceptance (LOA) which was issued vide this office letter No. F.10(19)/EE/SNM/PWD/5808-14 dt. 06.12.2022 and Letter for Commencement of Work vide No. F.10(30)/EE/SNM/PWD/6344-58, dt. 21.12.2022 **are hereby CANCELLED.**

S/d
(Er. S. Paul)
Executive Engineer
Sonamura Division, PWD(R&B)
Sonamura, Sepahijala, Tripura.”

[4] The challenge to the cancellation of letter of acceptance and letter for commencement of work by the petitioner is based primarily on lack of any show-cause notice when as per the terms of the LOA and letter for commencement of work the LOA amounted to a legally binding contract between the petitioner and the Government of Tripura.

[5] It is submitted by learned counsel for the petitioner that the impugned decision is in violation of principles of natural justice since adverse consequences flow out of cancellation of a legally binding contract between the petitioner on issuance of the letter of acceptance which vested a legal right in favour of the petitioner. In support of his contention, learned counsel for the petitioner relies upon a decision of the Apex Court in case of *State of Uttar Pradesh versus Sudhir Kumar Singh and others*, reported in (2021) 19 SCC 706. He has also relied upon a decision of this Court in

WP(C) No.455 of 2023 dated 21.08.2023. For the purposes of demonstrating the ingredients of a proper show-cause notice, he relies upon a decision of the Apex Court in case of *Gorkha Security Services versus Government (NCT of Delhi) and others*, reported in (2014) 9 SCC 105. Learned counsel for the petitioner submits that having submitted performance guarantee and having invested funds and also started execution of the work, cancellation of the contract without proper show-cause notice is arbitrary and violation of principles of natural justice. Therefore, the impugned corrigendum dated 12.01.2023 (Annexure-12) may be set aside.

[6] Learned counsel for the State has opposed the prayer. He relies upon the averments made in the counter affidavit to justify the cancellation of letter of acceptance and letter for commencement of work on the ground that the Tender Evaluation Committee reviewed the decision of the 1st meeting of the committee recommending the petitioner as the lowest tenderer as the papers submitted by the petitioner along with his tender documents indicated that there were no valid copy of enlistment of appropriate class registered with PWD /TTAADC /MES /CPWD/ Railway/ Govt. Organization of other State and Central that was issued in favour of M/S United Construction i.e. the petitioner. He has been requested to submit those shortfall documents i.e. enlistment of appropriate class registered with either of the aforesaid authorities in his favour by 25.01.2023 positively for finalization of the tender vide letter dated 12.01.2023 (Annexure-13). Learned counsel for the respondent has also sought to raise a plea that the letter for commencement of work was never communicated to the petitioner.

[7] Learned counsel for the petitioner, however, submits that the aforesaid plea is factually incorrect. If the letter for commencement of work was only lying in the official files and never issued in favour of the petitioner, there was no occasion to issue a corrigendum to cancel the letter of acceptance and the letter for commencement of work vide impugned corrigendum dated 12.01.2023 (Annexure-12). Moreover, petitioner had submitted the performance guarantee and started execution of the work as the LOA clearly showed that it was a legally binding contract.

[8] We have considered the submissions of learned counsel for the parties and gone through the materials on record. In the canvas of the brief facts narrated hereinabove, the only issue which requires answer is whether after issuance of the letter of acceptance and letter for commencement of work in favour of the petitioner, 'the legally binding contract' which came into existence created a vested legal right in favour of the petitioner which could not have been cancelled without a proper show-cause notice. In this regard, reliance is placed upon a decision of the Apex Court in case of ***Haridwar Singh v. Bagun Sumbrui and Others*** reported in (1973) 3 SCC 889. The aforesaid decision lays down the ratio that a concluded contract could come into existence only upon communication of the decision of acceptance of the offer by the employer. In the absence of such a communication, the correspondence made internally between the officials of the employer department could not result in any concluded contract between the parties.

[9] In the present case, the situation is otherwise. Upon a conscious decision of the competent authority, letter of acceptance and letter for commencement of work has been issued in favour of the petitioner. The contents of the letter of acceptance have been referred to in the foregoing paragraph which clearly indicates that it would amount to a legally binding contract between the petitioner and the Government of Tripura. Once a legally binding contract came into existence, the respondents could not have revoked it or cancelled it without proper notice. The plea of the respondents that the bid documents of the petitioner suffered from certain shortfall documents which led to review of the earlier decision of the Tender Evaluation Committee would not amount to clothing them with a right to revoke the legally binding contract between the parties without even an opportunity of show-cause to the petitioner.

[10] In such circumstance, we are left with no option but to quash the corrigendum dated 12.01.2023 (Annexure-12). However, liberty is reserved with the respondents to take a fresh decision, in accordance with law, after due opportunity to the petitioner to show-cause within a reasonable time.

[11] The writ petition is allowed in the manner and to the extent indicated above. Let it be made clear that we have not made any comments on the merits of the case.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

Dipesh

SIDDHARTHA LODH

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LODH
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