



**Serial No. 01**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP (C) No. 123 of 2024

Date of Decision: 24.09.2024

M/s J.C. Enterprise

**... Petitioner(s)**

**Versus**

1. Union of India

Through the Finance Secretary,  
Ministry of Finance to the Govt. of India,  
North Block, Parliament House,  
New Delhi-110001.

2. The Secretary,

Central Public Works Department,  
Ministry of Housing & Urban Affairs to the Govt. of India,  
Nirman Bhavan, New Delhi, 110011.

3. The Executive Engineer,

Border Fencing Division-III, CPWD  
Usha Bazar, P.O. Agartala Airport, Agartala,  
Tripura, Pin-799009.

**... Respondent(s)**

**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)**

**Appearance:**

For the Petitioner(s) : Mr. D. Sahu, Adv.

For the Respondent(s) : Mr. N. Mozika, DSGI with  
Ms. K. Gurung, Adv.




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|-----|---------------------------------------------------------|--------|
| i)  | Whether approved for reporting in<br>Law journals etc.: | Yes/No |
| ii) | Whether approved for publication<br>in press:           | Yes/No |

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### **JUDGMENT AND ORDER (ORAL)**

1. The petitioner a proprietorship firm is before this Court assailing the order of forfeiture of a Performance Guarantee dated 19.09.2023, passed by the respondent No. 3, and has prayed for refund of the guarantee amount and for directions to command the respondents to act as per the Office Memorandum No. F.1/1/2023-PPD, dated 06.02.2023 and No. F. 1/1/2023-PPD, dated 11.04.2023 issued by the Ministry of Finance, Government of India.

2. The background facts necessary are that the petitioner had participated in a tender floated by the respondents Nos. 2 & 3 for a construction project related to International Border Fencing in Tripura and was successful in its bid. However, due to certain reasons, the petitioner had withdrawn from the same, and in terms of the tender agreement, had forfeited the Performance Guarantee, which it now seeks refund of.



3. At the outset, a preliminary objection has been raised by the Dr. N. Mozika, learned DSGI on the ground of maintainability, inasmuch as, it is contended that the cause of action has arisen in the state of Tripura outside the territorial jurisdiction of this Court. To substantiate this challenge the learned Senior counsel has relied upon the affidavit filed by the respondents, wherein at paragraph 3 thereof, the objections have been elaborated. The same for the sake of convenience is reproduced hereinbelow:-

***“3. That at the outset the deponent states that the instant writ petition is not maintainable before this Hon’ble Court as such no cause of action wholly or in part, has arisen within the territorial jurisdiction of this Hon’ble Court. In the instant case;***

- ***The online NIT was issued by the Office of Executive Engineer, Border Fencing Division-III, Central Public Works Department, Agartala for the work “Plugging of 18 Nos. Nallah gaps with RCC box bridge with sluice and fence under Udaipur, Gokulagar, Teliamura and Panisagar Sector in Tripura. SH: GIN No. 697A, 697B, 698, 699, 701, 703, 706, 707, 708A & 708B under Udaipur Sector”;***
- ***The work was to be executed in Udaipur, Sector in Tripura;***
- ***The Performance Bank Guarantee was submitted by the petitioner in favour of the Executive Engineer, Border Fencing Division-III, Central Public Works Department, Agartala, Tripura;***



- *The letter dated 27.02.2021 to Bank of Baroda for forfeiting the petitioner's Performance Bank Guarantee was issued by the Executive Engineer, Border Fencing Division-III, Central Public Works Department, Agartala;*
- *The letter dated 19.09.2023 intimating that the petitioner is not entitled to release of forfeited Performance Bank Guarantee under the Vivad-Se Vishwas Scheme-I as the petitioner did not fulfill the criteria laid down under the said scheme was issued by the Executive Engineer, Border Fencing Division-III, Central Public Works Department, Agartala.*

*As such no cause of action, either wholly or in part has arisen within the territorial limits of this Hon'ble Court and as such the instant writ petition is not maintainable before this Hon'ble Court. It is further pertinent to mention herein that earlier when the Performance Bank Guarantee was forfeited the petitioner had approached the Hon'ble High Court of Tripura by way of W.P. (C) No. 456 of 2021 and the same was disposed of vide order dated 13.07.2021 allowing the petitioner to submit a representation."*

4. To these objections, Mr. D. Sahu, learned counsel for the petitioner has submitted that Article 226 has vested High Court with the power to issue directions, orders, or writs to any Government authority or person, even if the cause of action arises outside its territorial jurisdiction. He further submits that the registered office of the petitioner is at Shillong, and the online NIT issued by the respondents



had been responded to, and submitted by the petitioner from Shillong. It is also submitted that the Performance Guarantee was submitted by the petitioner from the Bank of Baroda, Shillong and the same had also been encashed by the respondents from Shillong. The learned counsel then contends that the contract work was never executed nor the contract agreement was ever signed by the petitioner. He lastly submits that the cause of action therefore having arisen partly in Shillong, this Court possesses ample jurisdiction to hear the matter.

5. Having heard the learned counsel for the parties, it is noted that the question of maintainability of the instant writ petition on the ground of territorial jurisdiction is necessary to be gone into first before any other orders are passed or directions issued on the writ petition.

6. The undisputed fact that is patent on the face of the records and materials as placed, show that the NIT had been floated for a project which was to be executed in Tripura, and as per the objections that have been reproduced at Para-3 above from the side of the respondents, the main cause of action can be clearly seen to have arisen in Tripura. The most telling fact however, that tilts the case in favour of the respondents



is that the writ petitioner had approached the High Court of Tripura by way of WP(C) No. 456 of 2021, which was disposed of by order dated 13.07.2021, by allowing the petitioner to approach the respondents for refund of the Performance Guarantee. The representation as allowed by the High Court of Tripura being rejected by the respondents vide the impugned order dated 19.09.2023, the petitioner instead of seeking remedy before the High Court of Tripura as resorted to by the earlier writ petition, on a continuing cause of action, has instead approached this Court seeking relief, which clearly smacks of forum hunting.

7. In view of the facts and circumstances of the case, the writ petition fails on the ground of maintainability and is accordingly dismissed.

**Chief Justice (Acting)**

Meghalaya  
24.09.2024  
"V. Lyndem-PS"