

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No. 43 of 2023

Date of Decision: 08.02.2024

Smti. Ridalin Law Vs. The Jaintia Hills Autonomous District
Council & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Ms. E. Wanniang, Adv.
For the Respondent(s) : Mr. N. Mozika, Sr. Adv with
Mr. M.L. Nongpiur, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

J U D G M E N T

Per W. Diengdoh, J.

1. The background facts as could be ascertained from the records is that the respondent No. 6 has floated a tender dated 18.10.2021 for appointment of an Agent to run the check station at Mookyndur within the jurisdiction of the Jaintia Hills Autonomous District Council

(JHADC) for the purpose of identifying/detecting illegal trading by commercial vehicles of non-tribal traders within such jurisdiction.

2. After all the formalities having been completed, the appellant being the highest bidder and being found suitable in all respect was expecting that she be awarded the agency, however, the respondent JHADC instead awarded the work to the second highest bidder, one Shri Rudolf G. Kyndiah. On the same being challenged before this Court in WP(C) No. 29 of 2022, this Court vide order dated 26.09.2022 set aside the appointment order dated 16.02.2022 and directed the respondents to re-examine the requirements and norms for setting up of the said check station.

3. The appellant on the strength of the order/communication dated 26.10.2022, by which the respondent/JHADC has indicated that the allotment to run the check station may be offered to the appellant/petitioner on the condition that she make arrangement for a suitable plot of land to set up the check gate, the same was according done so by her. However, the respondents apparently on a legal notice being issued by Shri. Rudolf G. Kyndiah, the unsuccessful second highest bidder, cancelled the said order dated 26.10.2022 and alternatively has decided to run the check station departmentally but at a different location, that is, at Khliehtyrshi, a place about 5 km from Mookyndur.

4. Being aggrieved by such action of the respondent/JHADC, the appellant as petitioner has again come before this Court with a writ petition being WP(C) No. 72 of 2023. This Court in a Single Bench, vide

judgment and order dated 11.09.2023 disposed of the matter in manner set therein.

5. The appellant not being satisfied with the said judgment and order dated 11.09.2023, has now come before this Division Bench on appeal.

6. Mr. H.L. Shangreiso, learned Sr. counsel appearing for the appellant in his argument has submitted that in the first place, the Court in WP(C) No. 29 of 2022 vide judgment and order dated 26.09.2022, whereby the respondents on being directed to relook and review the matter have been duly complied with. Consequently, the action of the respondents in directing the appellant to comply with certain conditions as could be seen from the letter dated 26.10.2022, that is, to provide a suitable land with laybye was only done in compliance with the said order of this Court which was fulfilled by the appellant. Therefore, for the respondents to recall its earlier decision and to cancel the offer of appointment to run the said check station at Mookyndur by the appellant only on the ground that a legal notice was issued upon such respondents by one of the failed tenderers, who at the relevant point of time no longer has any locus standi, is clearly an action done arbitrarily and with malafide intent.

7. Another limb of argument advanced by the learned Sr. counsel for the appellant is that the learned Single Bench after having observed that the decision-making process of the respondents in offering and thereafter in cancelling the offer made to the appellant without hearing her is flawed and to this extent, cost of ₹ 2,00,000/- (rupees two lakhs)

only was imposed upon the respondents/JHADC, yet has refused to grant the relief sought for only on the ground that no pleading has been made by the appellant/petitioner in her writ petition against the action of the respondents/JHADC to shift the said check station from Mookyndur to Khliehtyrshi. The learned Single Bench has, however, failed to acknowledge the fact that while directing the respondents/JHADC to produce relevant materials/records with regard to its decision to shift the check station from Mookyndur to Khliehtyrshi, copy of a lease agreement dated 18.11.2022 executed between the JHADC and Smti. Neh Rymbai for the land at Khliehtyrshi for the purpose of running the said check station was produced, which lease agreement was executed only within 22 days from the date on which the offer dated 26.10.22 was made to the appellant/petitioner to comply with the conditions for running of the check station at Mookyndur. The action of the respondents in doing so has clearly revealed a predetermined mind not to settle the contract with the appellant/petitioner which was lost sight of by the learned Single Bench.

8. The learned Sr. counsel has further submitted that the intention of the respondents to deny the settlement of contract to the appellant is apparent when, in the process of shifting of the said check station from Mookyndur to Khliehtyrshi, one Sevenborn Tang was appointed to run the said check station on commission basis. It was only when this Court was informed of the same that an observation was made in this appeal vide order dated 18.10.2023 requiring the respondent/District Council to take corrective measures in this regard, was the appointment of the said Agent cancelled.

9. The learned Sr. counsel has again submitted that as conceded by the respondent in course of the hearing of this appeal, there is no record to show that the NIT dated 18.10.2021 was formally dropped or cancelled and as such, the same is still subsisting till date and the issuance of the communication dated 16.03.2023 recalling the offer of appointment to the appellant by the respondents could not in any manner be described as an abandonment of the said NIT in question. The right of the appellant/petitioner vis-à-vis the consideration to operate the check station at Mookyndur is therefore, subsisting till date. The observation of the learned Single Bench that the entire tender process was abandoned was without any legal basis, it was further submitted.

10. In a counter to the argument of the respondents that one of the reasons for the shifting of the check station from Mookyndur to Khliehtyrshi is on the ground that there is likely to be a traffic crisis at Mookyndur in the event the check station is functioning therefrom, the learned Sr. counsel for the appellant has submitted that this cause was not cited in the impugned recall letter dated 16.03.2023 and as such, fresh reasons cannot be supplemented in the shape of affidavit or otherwise in course of proceedings before the Court.

11. Finally, the learned Sr. counsel has submitted that on the basis of the argument raised herein, this Court may be pleased to interfere with the impugned judgment and order dated 11.09.2023 passed by the Single Bench in WP(C) No. 72 of 2023 to the limited extent by allowing this appeal and to further be pleased to direct the respondent/District Council to issue the letter of appointment and for the agreement to be executed as

per condition No. 15 and 16 of the NIT dated 18.10.2021.

12. In support of the case of the appellant, the following authorities have been cited:

- i. Tata Cellular v. Union of India, (1994) 6 SCC 651, paras 70 and 77;
- ii. K.D. Sharma v. Steel Authority of India Limited & Ors., (2008) 12 SCC 481, paras 34 and 36;
- iii. Janak Dulari Devi & Anr. v. Kapildeo Rai & Anr.; (2011) 6 SCC 555, para 9;
- iv. Ritesh Tewari & Anr. v. State of Uttar Pradesh & Ors.; (2010) 10 SCC 677, paras 24 and 25;
- v. Airport Authority of India v. Centre for Aviation Policy, Safety and Research (CAPSR) & Ors., 2022 SCC Online SC 1334, para 6; and
- vi. Union of India & Ors. v. Bharat Forge Ltd., 2022 SCC Online SC 1086, paras 18, 19, 20.

13. Dr. N. Mozika, learned Sr. counsel appearing for the respondent/JHADC in response has submitted that the first argument raised herein is the fact that in the first round of litigation, that is, WP(C) No. 29 of 2022, the prayer of the petitioner therein who is also the appellant herein, is for the court to direct the petitioner/appellant herein to be appointed as Agent to operate the check station at Mookyndur, however, the learned Single Bench vide order dated 26.09.2022 has

refused to accede to such prayer but has instead directed the relevant respondent to have a relook at the decision especially the process thereof, before any decision of allotment is taken.

14. This ruling, according to the learned counsel for the respondent has not been challenged by the petitioner/appellant in appeal and as such, the same has attained finality. In WP(C) No. 72 of 2023 the same prayer for appointment of the petitioner/appellant was made. The appellant being barred from seeking the same relief which was denied/not granted to her in the earlier round of litigation, the principle of resjudicata would thus apply in this case. Therefore, no effective relief could be claimed by the appellant in this appeal.

15. It is also submitted that when the first writ petition, that is, WP(C) No. 29 of 2022 was filed, the learned Single Bench in its order dated 16.02.2022 had directed the respondent/JHADC to run the check gate at Mookyndur departmentally. Even in its final order dated 26.09.2022 the respondent/JHADC was directed to continue to run the said check gate departmentally. It was only when it is found that running of the check gate at Mookyndur is not feasible anymore because of increased traffic and VIP movement as well as instructions received from the State Government to keep traffic movement on highways unobstructed that the respondent/JHADC had decided to lease a larger plot of land at Khliehtyrshi for the purpose of shifting of the said check gate from Mookyndur to Khliehtyshi. This decision was confirmed by the Executive Committee in its meeting held on 29.11.2022.

16. Yet again, the letter dated 26.10.2022 issued upon the appellant

requiring her to arrange a suitable land with layby for the purpose of operation of check station at Mookyndur cannot be construed as a letter of appointment and as such no right has accrued to the appellant/petitioner by the said letter. In fact, when by letter dated 24.11.2022 the appellant had offered such land for setting up of the check gate, it was discovered that the land was the same land offered by the second highest bidder, Shri. Rudolf G. Kyndiah at the time of submission of his bid in the NIT. Furthermore, on a legal notice being issued by the said Shri. Rudolf G. Kyndiah dated 28.11.2022 which was duly considered by the Executive Committee on 14.03.2022 the EC in such meeting has decided to recall its earlier decision which was communicated to the appellant vide letter dated 26.10.2022, treating the same as cancelled. Since under the terms of the NIT dated 18.10.2021 land was supposed to be provided by the agent at his/her cost, the decision of the Executive Committee to shift the location of the check gate from Mookyndur to Khliehtyrshi can only be construed to mean that the NIT has been impliedly cancelled and therefore, the appellant has no vested right to be appointed as Agent to run the check station either at Mookyndur or at Khliehtyrshi. In this regard, the learned Sr. counsel has also submitted that the appellant in this appeal has not challenged the decision of the JHADC to shift the check station from Mookyndur to Khliehtyrshi.

17. The learned Sr. counsel has submitted that in the impugned judgment and order dated 11.09.2023 the learned Single Bench having considered all aspects of the matter especially the fact that the said check station is now run departmentally by the JHADC at Khliehtyrshi, though

it found that the decision-making process by the respondent/JHADC is flawed, however, the relief as prayed for by the appellant/petitioner is no longer available to be granted. The fact that cost of ₹ 2,00,000/- (rupees two lakhs) only was imposed upon the respondent/JHADC there is no infirmity found in the impugned judgment and order dated 11.09.2023.

18. This Court has carefully considered the submission and contention raised by the respective parties in this appeal and has also perused the impugned judgment and order dated 11.09.2023. What is required to be determined is whether the said impugned judgment and order was passed after taking into consideration all relevant factors.

19. Facts as indicated hereinabove not required to be repeated this Court is able to discern that the NIT in question has reached the stage of “Offer” wherein the appellant who was the highest bidder was on the verge to being appointed as the Agent of the said Check Station provided she fulfilled certain conditions, particularly preparation of a suitable land with layby facility, which according to her was duly complied with.

20. The letter dated 16.03.2023 whereby the offer letter dated 26.10.2022 was recalled has in no way mentioned any fault or shortcomings on the part of the appellant/tenderer/highest bidder as far as fulfilment of the condition imposed is concerned. The only reason cited was the consideration of the contents of the legal notice issued by one of the failed tenderer, wherein it was said that the site offered by the appellant/petitioner/tenderer was not the original site cited in her tender documents and this might lead to fresh round of litigation.

21. This issue was dealt with in the impugned judgment and order when the locus of the person who had issued the said legal notice was found to be lacking inasmuch as he is no longer part of the proceedings and could not have challenged the offer made to the appellant/petitioner. The outcome of such observation would only mean that the offer letter dated 26.10.2022 is still valid and the said recall letter dated 16.03.2023 on the reasons so stated ought not to have been issued as issuance of the same only reflects the intention of the respondents which is arbitrary and malafide in nature.

22. What is noticed in the proceedings before the JHADC is that no wrong has been committed by the appellant/petitioner as far as her participation in the tender process is concerned, the letter of offer dated 26.10.2022, albeit with certain conditions imposed, such conditions to be fulfilled within two month from 26.10.2022, ought to have been allowed to run its course and the final decision to award the contract to be made after the two months' period allowed to the appellant has expired, however, as is evident, even before the two months' period is over, the respondent/JHADC has already executed an agreement with Smti. Neh Rymbai on 18.11.2022, which date is well before the expiry of the two months' period, for lease of the land at Khliehtyrshi for the purpose of running the check station instead of the same to function from Mookyndur. This action smacks of arbitrariness and a predetermined intention not to award the contract to the appellant, However, the learned Single Bench has considered such development as one which has changed the entire complexion of the case giving rise to a fresh cause of action, the finding as such, was on account of the complete factual situation not

being brought to its notice since the action of the respondent/JHADC to shift its location from Mookyndur to Khliehtryshi has not been explained to the appellant/petitioner in the letter dated 16.03.2023. Therefore, it is safe to say that the decision of the respondents/JHADC to shift the said location of the check station is not part of the tender process or one of the conditions in the said NIT dated 18.10.2021. In this regard, the case of K.D. Sharma(supra) cited by the appellant at paras 34 and 36 speaks of the application of the principle of “He who comes before the court must come with a clean hand”. The same is equally true and is applicable to all the parties to the lis. The respondent/JHADC as pointed out has failed to disclose the facts as regard the execution of the said agreement dated 18.11.2022 and could therefore not be eligible for any relief from the court.

23. In the case of Tata Cellular(supra) at para 70 the Apex Court has observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. At para 77 of the same judgment, it was held that the duty of the court is to confine itself to the question of legality as to whether a decision-making authority exceeded its power, committed an error of law, committed a breach of the rule of natural justice, acted unreasonably as a tribunal and finally whether such authority has abused its powers. In the light of such observation, the factual matrix of the case of the parties herein would reveal that the respondent/JHADC had clearly adopted a bias attitude and conduct as far as the right of the appellant to be considered for allotment of the said contract is concerned. Without concluding the tender process, the shifting of the said check station from

Mookyndur to Khliehtyrshi is an act of illegality on the part of the said respondents.

24. The objection of the respondent/JHADC on the issue of applicability of the principle of resjudicata ought to have been taken up before the learned Single Bench which was not done so. In any case, this Court finds that there is no question of resjudicata involved in the case as the appellant/petitioner had approached the writ court on a fresh cause of action, particularly being aggrieved by the recall letter dated 16.03.2023.

25. This Court is in agreement with the findings of the learned Single Bench as far as the arbitrary conduct of the respondent/JHADC is concerned thus depriving the appellant/petitioner her right to be considered for allotment of the contract, however as to the observation and finding that the tender process in question was abandoned upon the decision of the respondent/JHADC to shift the location from Mookyndur to Khliehtyrshi, with no materials on record available and more so on the admission of the respondent/JHADC that there is no record of the tender process being abandoned, as observed above, it stands to reason that the same is still subsisting. The observation thus made is to be faulted herein. In view thereof, the finding of the learned Single Bench that the tender process was abandoned upon the decision of the respondent/JHADC to shift the location stands interfered with.

26. As far as the imposition of cost is concerned, it is the submission of the appellant that the same though issued by the respondent/JHADC by way of a cheque, the said cheque was returned, therefore this aspect of the matter does not require any specific

consideration or direction.

27. In the light of the above, this Court finds that since the said tender process is not yet concluded, the appellant is to be given a fair opportunity of being considered for running of the said check station at Mookyndur, unless decided otherwise by the respondent authorities in accordance with law at the conclusion of the said tender process.

28. It is to be noted that only relevant authorities cited by the parties have been taken into consideration.

29. To the extent indicated above, this appeal is allowed. No costs.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge

Meghalaya
08.02.2024
"Tiprilynti-PS"