

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.44/2023 with
MC (WA) No.50/2023

Date of Order: 22.02.2024

Pragati Engineers Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. K. Paul, Sr.Adv with
Mr. S. Chanda, Adv

For the Respondents : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes

JUDGMENT:

(Made by Hon'ble Chief Justice)

The present Writ Appeal has been preferred against the order of the learned Single Judge dated 20.09.2023 passed in WP (C) No.304 of 2023, by which it was held that the tender conditions or the process thereof cannot be said to be infirm, thereby, the plea of the Writ Petitioner / Company for interfering with the tender was negative.

2. It is the case of the Writ Petitioner / Company that it is in the business of supplying various electrical equipment and lightning protection to the Government instrumentalities for the last 22 years, besides having 40 years of experience in the field. It is further case of the Writ Petitioner that the authorization letter dated 08.07.2023, issued in favour of the Writ Petitioner by M/s. JMV LPS Ltd to supply and bid for lightning conductor system is valid till 02.07.2024 and the Writ Petitioner was not aware of cancellation of the authorization letter by M/s. JMV LPS Ltd, as there was no communication in that regard and therefore, it cannot be said that the authorization letter submitted by the Writ Petitioner is fake. It is also the case of the Writ Petitioner that without any notice or intimation, the authorization given to the Company was cancelled on 01.08.2023, by an email dated 11.08.2023, which reads as follows:

“This is to inform that our firm M/s JMV LPS Limited has cancelled the authorization of M/s Pragati Engineers immediately after issuing as our working terms were not matching with them. Also M/s Pragati Engineers was clearly informed not to place authorization of M/s JMV LPS Limited against GeM Bid No GEM/2023/B/3622434 dated 27/06/2023 uploaded by Assam Rifles for installation of the product in the location of Assam Rifles in North East.

With this we hereby confirm that we do not authorize M/s Pragati Engineers for the said tender.”

3. The case put forth by the Writ Petitioner is that the Company was the successful bidder and it is not known as to who had signed the letter of cancellation of authorization. Moreover, the cancellation of authorization, which was brought to the notice of the Writ Petitioner only after filing of the writ petition cannot weigh much importance, as the Director Technical had signed the authorization letter dated 08.07.2023. Apart from the above, the details, such as name of authorized signatory, his/her designation, email address and the telephone number must reflect in the cancellation letter, which is absent in the communication dated 01.08.2023.

4. At this juncture, besides raising various averments, learned DSIG, representing the respondents, inter alia, contended that the tender has been awarded to a third party, namely, M/s Assam Supply Syndicate and has carried out 40 per cent of the work and at this distant point of time, the cancellation will definitely affect the entire process and the work for which the tender was issued will come to a standstill.

5. Learned DSGI further contended that the Company, which has been awarded with the tender has not been made as a Party and on that score, the Writ Appeal has got to be rejected. It is also contended

that the learned Single Judge had elaborately discussed the two grounds on which the Writ Petitioner was found unfit and disqualified to participate in the bid in Paragraph No.8 of the order.

6. Heard the learned counsel on either side and perused the material documents on record.

7. The main case of the Writ Petitioner / Company is that they are the successful bidder and the unilateral cancellation of authorization letter without any intimation cannot disentitle the Writ Petitioner to participate in the tender. In the present Writ Appeal, we are not inclined to go into the factual aspects of the matter, which was canvassed by either parties. It is not in dispute that subsequently, the tender has been awarded to a third party, viz., M/s Assam Supply Syndicate and that the said Company has also not been made as a Party to the *lis* before this Court. At this point of time, this Court can, at the most, give liberty to the Writ Petitioner to claim compensation, if so advised, in case of any violation in respect of award of tender to the third party, instead of interfering with the order of the learned Single Judge or the tender process, for the reason that as stated *supra*, the tender has been awarded

to another Company, pursuant to which, the Company has also carried out 40 per cent of the work.

8. In the result, while declining to grant the relief as sought for by the Appellant herein / Writ Petitioner, W.A.No.44 of 2023 stands dismissed. MC (WA) No.50 of 2023 stands disposed of.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
22.02.2024
"*Lam* DR-PS"