



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Review Pet./6/2016

The State of Arunachal Pradesh
REPRESENTED BY THE EXECUTIVE ENGINEER,
PWD, ZIRO DIVISION,
LOWER SUBANSIR DISTRICT ,
ZIRO,
AP.

VERSUS

M/S ANU ENTERPRISES
HEAD QUARTER AT ITANAGAR,
PO/PS ITANAGAR,
PAPIM PARE DISTRICT,
AP.

Advocate for the Petitioner : Mr. S. Tapin, Sr.G.A. (AP)

Advocate for the Respondent :

BEFORE
HONBLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

Date : 18-06-2024

Heard Mr. S. Tapin, learned Senior Government Advocate appearing for the review petitioners.

2. None appeared for the sole respondent, though, notice was served on the

respondent/opposite party M/s Anu Enterprises, it did not appear in the matter.

3. Earlier the sole respondent as petitioner filed a writ petition being WP(C)240(AP)2016 wherein the present applicants/review petitioners were made as a party respondents. The writ petitioner was involved in various contractual works like construction and supply materials by participating in the tender process. The petitioner contended that by following the code requirement the respondent authorities should not allow work order or the allotment of works without fulfilling the required NIT (Notice Inviting Tender). It was stated in the writ petition that the Chief Engineer, PWD Central Zone, Government of Arunachal Pradesh, Itanagar, the Executive Engineer, PWD, Ziro Division, Lower Subansiri District without issuing any notice inviting tender contemplated to handover work order to the contractors who are close with those concerned authorities.

4. Considering the same, this Court by its order dated 11.05.2016, passed in WP(C)240(AP)2016, preferred by the sole respondent, disposed of the said writ petition at the motion stage itself, directing the State respondents therein to issue workorders with regard to the sanction orders dated 26.03.2016, 27.03.2016 and 28.03.2016, only after floating the NITs and selecting the contractors, in accordance with law. While passing the order dated 11.05.2016, passed in WP(C)240(AP)2016, the Court also observed that as per the CPWD Manual as well as the General Financial Rules and Regulations, the Department concerned is required to call for NIT against any work involving Rs. 5 lakhs or more and finding that all such works involved in said WP(C)240(AP)2016 being above Rs. 5 lakhs the Court observed that the State respondents are bound to issue NITs for such works.

5. By filing this review application, the review petitioners/the State of

Arunachal Pradesh represented by the Executive Engineer, PWD, Ziro Division, Lower Subansiri District submitted that General Financial Rules, 2005 of Government of India, Ministry of Finance, Department of Expenditure is followed by the State while issuing any contractual works.

(i) Rule 128 of the said Financial Rules, 2005 provides as follows:

Subject to the observance of these general rules, the initiation, authorization and execution of works allotted to a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them.

(ii) Rule 129 (1) of the said Financial Rules, 2005 specifies as follows:

(1) No works shall be commenced or liability incurred in connection with it until, -

(i) administrative approval has been obtained from the appropriate authority in each case;

(ii) sanction to incur expenditure has been obtained from the competent authority;

(iii) a properly detailed design has been sanctioned;

(iv) estimates containing the detailed specifications and quantities of various items have been prepared on the basis of the Schedule of Rates maintained by CPWD or other Public Works Organisations and sanctioned;

(v) funds to cover the charge during the year have been provided by competent authority;

(vi) tenders invited and processed in accordance with rules;

(vii) a Work Order issued.

(iii) Rule 129 (2) stipulates as follows:

On grounds of urgency or otherwise, if it becomes necessary to carry out a work or incur a liability under circumstances when the provisions set out under sub rule 1 of rule 129 cannot be complied with, the concerned executive officer may do so on his own judgement and responsibility. Simultaneously, he should initiate action to obtain approval from the competent authority and also to intimate the concerned Accounts Officer.

6. it is submitted that on the ground of urgency as it was necessitate to carry out the work and incurred the liability under the circumstances, the authorities concerned in the Executive Engineer, PWD, Ziro Division, Lower Subansiri District following the provision of Rule 129(2) of the said 2005 Rules, allotted the relevant works to the concerned contractors by issuing work orders on 10.03.2016 itself much before the passing of the order dated 11.05.2016, by this Court in said WP(C)240(AP)2016. It is also submitted that pursuant to the work orders issued on 10.03.2016 by the Executive Engineer, PWD, Ziro Division, the concerned contractors have already carried out/executed the contractual work allotted to them and that these facts were not placed before the Court while the order dated 11.05.2016 was passed in WP(C)240(AP)2016. Hence, this review petition for recalling the order dated 11.05.2016, passed in WP(C)240(AP)2016.

7. Perused the provisions of Rule 129 (2) of the General Financial Rules, 2005 of the Government of India, Ministry of Finance, Department of Expenditure. Considering the fact that work orders were issued by the Executive Engineer, PWD, Ziro Division way back on 10.03.2016, following the provisions of Rule 129 (2) of the said 2005 Rules and since work allotted to the concerned contractors by such work orders dated 10.03.2016 have already been completed and as

those facts were not placed before the Court at the relevant point of time while the Court passed the order dated 11.05.2016, in said WP(C)240(AP)2016 the Court is of the view that the said order dated 11.05.2016 needs to be reviewed.

8. Considering the entire aspect of the matter and the facts stated above, the order dated 11.05.2016, passed in WP(C)240(AP)2016 is accordingly, reviewed and recalled.

9. Accordingly, this Review Petition stands allowed.

JUDGE

Comparing Assistant