

GAHC040001262024



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

Case No. : WP(C)/49/2024

Shri Lokam Tamar Anthony

(Proprietor of M/s L.T. Enterprises)

Aged about 45 years

Son of Sri Lokam Tachung

Resident of village – Lubupa

PO Damin, PS Koloriang

District Kurung Kumey

Arunachal Pradesh.

..... Petitioner

-Versus-

1. The State of Arunachal Pradesh represented by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
2. Director, Rural Development Department, Itanagar, Government of Arunachal Pradesh.
3. Joint Director(RE), Department of Rural Development, Itanagar, Government of Arunachal Pradesh.
4. Block Development Officer, CD Block Parsi-Parlo, Koloriang, District Kurung Kumey, Arunachal Pradesh.
5. Project Director(PD), District Rural Development Agency(DRDA). Kurung Kumey District, Koloriang, Arunachal Pradesh.
6. Tender Evaluation Board-cum-Tender Evaluation Authority represented by its Chairman, DRDA, Koloriang, Kurung Kumey District, Arunachal Pradesh.
7. Nodal Officer, MGNREGA, District Rural Development Agency(DRDA), Koloriang, Kurung Kumey District, Arunachal Pradesh.



8. M/s. C.R. Enterprises, represented by its proprietor, Mrs. Chera Rita, w/o Md Aslam Rafiqul, Village Ringhio, PO/PS Koloriang, Kurung Kumey District, Arunachal Pradesh.

..... Respondents

By Advocates:

For the petitioner: Mr. M. Biswas
Mr. N. Handique
Mr. T. Taba
Mr. B. Taba
Ms. C. Ering

For the respondents: Ms. Pubi Pangu, Government Advocate

Mr. Binter Picha, standing counsel

Mr. Dilip Mazumdar, Sr. Adv.

Mr. Taja Garam

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 13.03.2024

Date of Judgment & Order: 13.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. M. Biswas, learned counsel, along with Mr. N. Handique, learned counsel, appearing on behalf of the petitioner. Also heard Ms. Pubi Pangu, learned Government Advocate, appearing on behalf of Respondent No. 1; Mr. Binter Picha, learned standing counsel, Department of Rural Development, Government of Arunachal Pradesh, appearing on behalf of Respondents No. 2, 3, 4, 5, 6 & 7; and Mr. Dilip Mazumdar, learned senior counsel, assisted by Mr. Taja Garam, learned counsel, appearing on behalf of Respondent No. 8.



2. The challenge in the present proceedings instituted by the petitioner is to a Letter of Intent(LoI), dated 08.01.2024, issued by the Director, Department of Rural Development, Government of Arunachal Pradesh, to the Respondent No. 8 firm, by holding him to be the lowest bidder in pursuance to a Notice Inviting Tender(NIT), dated 11.08.2023.

3. The Notice Inviting Tender(NIT), dated 11.08.2023, was so issued inviting bids from approved and eligible contractor/vendor/ firm of Kurung Kumey District for "Supply and Procurement of Materials under MGNREGA-2023-24, in respect of CD-Block Parsi-Parlo, Kurung Kumey District, Arunachal Pradesh". The petitioner being eligible, had submitted his bids complete in all respects. Along with the petitioner, 3(three) other firms including the Respondent No. 8 firm had also submitted their respective bids.

4. It is the contention of the petitioner, basing on a RTI reply, dated 25.01.2024, received by him from the Project Director, District Rural Development Agency, Government of Arunachal Pradesh, Kurung Kumey District, that the Board as constituted by the Project Director, District Rural Development Agency, Koloriang, for evaluation of the bids received in pursuance of the said Notice Inviting Tender(NIT), dated 11.08.2023, had recommended the petitioner firm as the lowest bidder. The bid of Respondent No. 8 firm was found to be non-responsive for the grounds as assigned



in the recommendation of the said Board, dated 30.11.2023. The recommendations of the said Board along with the bids as received by the Project Director, District Rural Development Agency, Koloriang, was thereafter forwarded to the Director, Department of Rural Development, Government of Arunachal Pradesh, Itanagar, vide communication, dated 30.11.2023, for approval.

5. It is the further contention of the petitioner that although the petitioner firm was recommended as the lowest bidder, the Director, Department of Rural Development, Government of Arunachal Pradesh, in a most arbitrary manner, issued the Letter of Intent(LoI), dated 08.01.2024, awarding the work to the Respondent No. 8 and it was contended that the said Letter of Intent(LoI), dated 08.01.2024, was so issued ignoring the recommendation made by the Tender Evaluation Board. Being aggrieved, the present proceedings were so initiated by the petitioner, assailing the Letter of Intent(LoI), dated 08.01.2024.

6. Mr. Biswas, learned counsel appearing on behalf of the petitioner, by taking this Court through the various terms and conditions as prescribed in the said Notice Inviting Tender(NIT), dated 11.08.2023, including the condition laying down the eligibility criteria required to be possessed by the tenderers bidding in pursuance to the same, submits that the Respondent



No. 8 not being an enlisted firm under the provisions of the Arunachal Pradesh Enlistment of Contractors in Works Department Rules, 2008, was clearly ineligible for submitting its bids in pursuance of the said Notice Inviting Tender(NIT), dated 11.08.2023.

7. Mr. Biswas, learned counsel, by referring to the provisions of Clause 15 of the said Notice Inviting Tender(NIT), dated 11.08.2023, submits that the tender bids as received, is mandated to be evaluated by the Board constituted by the Project Director, District Rural Development Agency, Koloriang, at the district level and the Board on evaluation of the bids, is to recommend at least 3 firms as L1, L2 and L3 to the competent authority for its acceptance along with all relevant documents. The learned counsel further submits that the Letter of Intent(LoI), dated 08.01.2024, is to be issued to the bidder whose bid is denoted as L1 and duly recommended by the Project Director, District Rural Development Agency, Koloriang. The petitioner firm having been denoted as the L1 bidder and it having been found to have satisfied all the requisite eligibility criterias by the Board as constituted under Clause 15 of the said Notice Inviting Tender(NIT), dated 11.08.2023, Mr. Biswas, learned counsel, submits that the petitioner firm ought to have been allotted the work in question. The issuance of the Letter of Intent(LoI), dated 08.01.2024, in favour of the Respondent No. 8 firm, is contended to be so done by the Director, Department of Rural Development, Government of



Arunachal Pradesh, without any jurisdiction in the matter.

8. Mr. Biswas, learned counsel for the petitioner; further submits that the District Board having noted discrepancies in the tender bid as submitted by the Respondent No. 8 firm and the same having been set-out in the recommendation as made by it; the Respondent No. 2 without having dealt with the said discrepancies as noticed by the Board; ought not to have issued the Letter of Intent(LoI), dated 08.01.2024, in favour of the Respondent No. 8 firm. It is the contention of Mr. Biswas, learned counsel for the petitioner that the discrepancies as existing in the bid submitted by the Respondent No. 8 firm was deliberately ignored, only with the view, to favour it with the work in question.

9. Mr. Picha, learned standing counsel, Department of Rural Development, Government of Arunachal Pradesh, at the outset, submits that the Notice Inviting Tender(NIT), dated 11.08.2023, was issued for supply of goods and such supply was to be effected by the Contractor concerned within 31.03.2024. Mr. Picha, by referring to the contentions made by the Respondents No. 2 to 7, in the affidavit-in-opposition as filed by them before this Court, submits that the projections made by the petitioner in the writ petition, is clearly unsustainable in-as-much as the Letter of Intent(LoI), dated 08.01.2024, as granted to the Respondent No. 8 firm was so done after a proper re-scrutiny of the bids as



submitted by the parties by a duly constituted committee at the Office of the Director, Department of Rural Development, Government of Arunachal Pradesh, Itanagar.

10. Mr. Picha, learned Standing Counsel, further submits that the Committee as constituted in the matter upon scrutiny of the bids of all the bidders, had, vide an order, dated 05.01.2024, recommended the Respondent No. 8 firm to be the L1 bidder. The learned Standing Counsel also submits that the minutes as annexed to the said order, dated 05.01.2024; reveals that the Committee had duly examined the bid documents as well as the bid value quoted by each of the bidders and had come to a conclusion that the bid as preferred by the Respondent No. 8 firm, was satisfying the bid eligibility criterias and that the Respondent No. 8 firm had quoted the lowest rate in the matter and accordingly, the said Committee had denoted the Respondent No. 8 firm as the L1 bidder. It was also noted that the bid of the petitioner was duly considered and on such consideration, the Committee had declared the bid of the petitioner firm to be non-responsive and accordingly, the petitioner firm was disqualified along with one another firm participating in the said tender process.

11. Mr. Picha, learned standing counsel, Department of Rural Development, Government of Arunachal Pradesh, further submits



that the petitioner while presenting a challenge to the Letter of Intent(LoI), dated 08.01.2024, has failed to present any challenge to the decision of the said Committee as communicated vide the said order, dated 05.01.2024, and accordingly, it was contended that this writ petition is not maintainable and this Court would be pleased to dismiss the same on the said count alone.

12. With regard to the plea of the Respondent No. 8 firm not being enlisted; it was contended by Mr. Picha, learned standing counsel, that the proprietor of the said firm is a permanent resident of Rengchi village, Kurung Kumey District, Arunachal Pradesh, and she being a domicile of the said area; she is eligible to participate in the said tender process. It was also highlighted that the said Respondent No. 8 firm was earlier also allotted with a similar work vide a Letter of Intent(LoI), dated 12.04.2022, and the firm has been executing the works in the Department of Rural Development, Government of Arunachal Pradesh, and had acquired due experience therein.

13. Mr. Mazumdar, learned senior counsel appearing on behalf of Respondent No. 8 firm, by drawing the attention of this Court to the RTI reply, 25.01.2024, relied upon by the petitioner; submits that the petitioner was in the knowhow of the decision as contained in the order, dated 05.01.2024 of the Committee constituted at the level of the Director, Department of Rural Development, Government of Arunachal Pradesh. However, the



said particulars were not disclosed in the writ petition which leads to a conclusion that the petitioner had suppressed vital material facts in the writ petition. Mr. Mazumdar, further submits that in the event, the petitioner had disclosed the decision as arrived at in the matter with regard to the bid of the petitioner firm in terms of the decision as contained in the order, dated 05.01.2024, there would have arisen no occasion for this Court to pass any interim direction in the matter. The learned senior counsel for Respondent No. 8 firm, therefore, submits that the petitioner by suppressing vital material facts has misled this Court to pass the interim directions in the present proceedings.

14. Mr. Mazumdar, learned senior counsel, in this context, relies on the decision of the Hon'ble Supreme Court in the case of ***K. D. Sharma v. Steel Authority of India Ltd. & ors.***, reported in ***(2008) 12 SCC 481***; and submits that admittedly, the petitioner being guilty of suppression of relevant material facts and of misleading this Court; this writ petition is liable to be dismissed at the threshold without considering the merits of the claim as raised by the petitioner.

15. During the hearing of the matter on 11.03.2024 and given the contentions as raised by the learned counsel for the respondents, noticing the issue of suppression of facts by the petitioner firm raised by the Respondent No. 8 firm; this Court had required Mr. Picha, learned Standing Counsel, Department of Rural



Development, Government of Arunachal Pradesh, to receive instructions as to whether the decision as contained in the order, dated 05.01.2024 of the Committee, upon re-scrutiny of the documents submitted by the bidders; was furnished to the petitioner along with the RTI reply given to him vide the communication, dated 25.01.2024.

16. Today, when the matter was taken-up for further consideration; Mr. Picha, learned Standing Counsel, Department of Rural Development, Government of Arunachal Pradesh, has placed before this Court, the instructions as received by him from the Project Director, District Rural Development Agency, Kurung Kumey District, Koloriang, with regard to the said query as raised by this Court.

17. The said Project Director, District Rural Development Agency, vide the communication, dated 13.03.2024, had informed the learned Standing Counsel, Department of Rural Development, Government of Arunachal Pradesh, that while furnishing information under the provisions of the RTI Act, to the applicant Shri Dongche Piter, the Minutes of the Meeting of the Committee as contained in the order, dated 05.01.2024, pertaining to the re-scrutiny of the documents of the bidders by the Joint Director (RE), Department of Rural Development, Government of Arunachal Pradesh, was also furnished.



18. The contents of the said communication, dated 13.03.2024, being relevant to the issues as arising in the present proceedings, is extracted hereinbelow:

“Sir,

As per the query made by you, it is to inform you that this office had received RTI application from Shri Dongche Piter in respect of Parsi Parlo CD Block and from Shri Yumlam Rade for Koloriang CD Block.

As per the record, while furnishing information, the APIO has furnished regarding order dated 05.01.2024 to the applicants, which pertains to re-scrutiny of tender documents of the bidders by the Joint Director(RE), Rural Development Department, Government of Arunachal Pradesh, Itanagar.”

19. The disclosure as made by the Project Director, District Rural Development Agency, Koloriang, that a copy of the order, dated 05.01.2024, along with the decision of the Committee as constituted at the level of the Director, Department of Rural Development, Government of Arunachal Pradesh, was also given to the RTI applicant; leads this Court to a conclusion that the petitioner at the time of institution of the present proceedings, on 03.02.2024, had knowledge of the reason as to why the Respondent No. 8 firm was awarded the Letter of Intent(LoI), on 08.01.2024 and also of the fact that the bid of the petitioner firm was rejected.

20. Perusal of the pleadings as brought on record in the writ petition, reflects that the said fact was not revealed by the petitioner in the writ petition. The prayers as made in the writ



petition also reveals that the petitioner has not presented any challenge to the said order, dated 05.01.2024, or, to the grounds on which, his bids was rejected.

21. In this case; the writ petitioner having suppressed material facts and having not disclosed the true state of affairs leading to the issuance of the Letter of Intent(LoI), dated 08.01.2024, to the Respondent No. 8 firm, has disentitled itself to be granted any relief by this Court and this writ petition, on the said ground alone, deserves to be dismissed. The facts as suppressed by the petitioner and as noticed hereinabove, has a great bearing in the matter.

22. In this connection; with profit, this Court may refer to the case of **General Manager, Haryana Roadways v. Jai Bhagwan & anr.**, reported in **(2008) 4 SCC 127**, wherein, the writ petition was dismissed with exemplary cost of Rs. 1,00,000/- because in the "list of dates" filed with the Petition for Special Leave to Appeal(SLP for short), fact that the first respondent therein had been reinstated in service or that his services had been regularized had not been disclosed, but in the prayer for interim relief, stay of the High Court's judgment thereby reinstating the first respondent was sought. Suppression of fact at the instance of State was viewed seriously and the SLP was dismissed with exemplary costs of Rs. 1,00,000/.



23. The following observation was made by the Supreme Court of India in the case of ***Gajadhar Prasad v. Babu Bhakta Ratan***, reported in ***(1973) 2 SCC 629***, being relevant is extracted hereinbelow:-

"17. Mr. J.N. Chatterji relied upon the following passage in Marudanavagam Pillai v. Manickavasakam Chettiar, AIR 1945 PC 67 at p. 70:

"If the respondent knew the true facts, if he purchased at what he knew was too low a figure based on an upset price accepted by the Court owing to his own initial misrepresentation and subsequent suppression of material facts, his conduct would amount to fraud on the Court as the learned subordinate judge points out."

24. In the case of ***Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.***, reported in ***(2008) 1 SCC 560***, the Hon'ble Supreme Court had observed as follows:

"16. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries, (1980) 3 SCC 311, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt."

25. It would also be relevant to refer to the case of ***S.P. Chengalvaraya Naidu v. Jagannath (Dead)***, reported in ***(1994) 1 SCC 1***, where the Hon'ble Supreme Court had observed as follows:

"7. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."



26. This brings this Court to consider the decision of the Hon'ble Supreme Court rendered in the case of ***K.D. Sharma v. Steel Authority of India Ltd.***(supra), wherein, the Hon'ble Supreme Court has held, as under:

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs. in the following words: (KB p. 514)

".....it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-it says facts, not law. He must not misstate the law if he can help it-the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs. Viscount Reading, C.J observed: (KB pp.



495-96)

“..... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.”

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete(correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought e without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

27. Thus, this Court is constrained to hold that the petitioner although



being in possession of the said order, dated 05.01.2024, and the decision as enclosed thereto, pertaining to the re-scrutiny of the tender documents of the bidders by the Joint Director(RE), Department of Rural Development, Government of Arunachal Pradesh, had withheld the same from this Court and the only presumption that can be legally drawn is that in the event, the said order was placed on record before this Court; the same would have been adverse to the petitioner. Accordingly, this Court is constrained to hold that the petitioner by suppressing the said material facts, had misled this Court. Therefore, in the light of the decisions referred to hereinabove and more particularly, the decision of the Hon'ble Supreme Court in the case of *K. D. Sharma*(supra); the petitioner for the said act on his part, has disentitled itself from being granted any relief in the matter.

28. Further, on account of the conduct of the petitioner, as noticed hereinabove; this Court refrains from proceeding to consider the issues raised by the petitioner in this writ petition on its merits. Accordingly, the pleas as raised by the petitioner in this writ petition, is not taken-up for consideration on merits.

30. In view of the above position; the writ petition stands dismissed. However, there shall be no order as to costs.

31. The interim directions passed by this Court vide the order, dated 05.02.2024, stands vacated.



32. The respondent authorities are hereby directed to allow the Respondent No. 8 firm to continue with the supply of the goods in terms of the award of contract, in his favour and also the execution of agreement by him with the competent authority in the matter.

JUDGE

Comparing Assistant