

GAHC040001832024



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

Case No. : Review Pet./2/2024

M/s Nabam Tullon LLP
having its registered office at Nirjuli Shortcut, PO and PS Nirjuli, Papumpare District,
Arunachal Pradesh represented by its Managing Director Shri Nabam Tullon Son of
Late Nabam Tana, resident of Gumto PO and PS Doimukh, Papumpare District,
Arunachal Pradesh

VERSUS

The State of AP and 9 Ors
represented by the Commissioner, PWD, Govt of Arunachal Pradesh, Civil
Secretariat, Itanagar

2:The Principal Secretary
Age: 0
Occupation :

3:The Chief Engineer
Age: 0
Occupation :

4:The Superintending Engineer
Age: 0
Occupation :

5:The Executive Engineer
Age: 0
Occupation :

6:The Assistant Engineer

Age: 0

Occupation :

7:M/S Kenge Construction

Age: 0

Occupation :

8:M/S Tanor Engineering

Age: 0

Occupation :

9:M/S T K Engineering Consortium Pvt Ltd

Age: 0

Occupation :

10:M/S Gannon Dunkerly and Co. Ltd.

Age: 0

Occupation

Advocate for the Petitioner : Marto Kato

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE S.K.MEDHI

ORDER

Date : 22.02.2024

Heard Shri P.J. Saikia, learned Senior Counsel for the applicant / writ petitioner, who by means of this application has prayed for review of the order dated 29.01.2024 passed by this Court in the connected WP(C)/23/2024. Also heard Shri S. Tapin, learned Senior Government Advocate, Arunachal Pradesh

who has joined online.

2. This Court while considering the writ petition had initially passed an order on 24.01.2024 whereby the matter was directed to be listed for motion again on 29.01.2024 to enable the learned Sr. GA, State of Arunachal Pradesh to obtain instructions. It was also observed that in the event the financial bids are opened on that date, no final orders of allotment be passed till the next date fixed.

3. The matter was accordingly listed for consideration on 29.01.2024 when the learned Senior Government Advocate, Arunachal Pradesh had obtained the instructions.

4. This Court after considering the submissions of the learned counsel for the petitioner as well as the learned State Counsel had issued notice and on consideration of the interim prayer had expressed an opinion that the interpretation sought to be given on behalf of the petitioner *qua* Clause 1.7.4 of the tender document was *prima facie* not legally tenable and therefore, no interim order was called for. However, it was observed that all actions taken pursuant to the RFP in question would be subject to the outcome of the writ petition. This Court had also clarified that the interim direction made on 24.01.2024 stood vacated. It is the aforesaid observation vacating the interim direction in respect of which the present review has been sought for.

5. The learned Senior Counsel for the applicant has submitted that though the observations made by this Court with regard to the interpretations of Clause 1.7.4 is not questioned, there are no clause in the RFP which empowers the Department to reject a tender for non-fulfilment of the said clause. In this regard, he refers to the Schedule-D of the RFP which finds place in page 87 of

this application. Under the said Schedule D, it is submitted that the procedure for technical bid evaluation has been laid down which also envisages allotment of marks under various Heads and there is no provision for rejection of a tender for non-fulfilment of the aforesaid clause. He further submits that the applicant has, in the meantime gathered additional information that certain documents of the private respondent are forged and therefore the bid of the said private respondent would be untenable in law.

6. Shri S. Tapin, the learned Sr. Government Advocate has however submitted that the aforesaid grounds cannot be treated to be grounds for review of an order. He has also pointed out that being aggrieved by the aforesaid order dated 29.01.2024, a writ appeal was preferred being WA/3/2024 which however was withdrawn on 08.02.2024. He submits that such withdrawal was made with liberty to file afresh and there was no stipulation regarding filing of a review application. He otherwise submits that the applicant has not met the requirements of filing a review petition wherein the parameters are well settled.

7. Shri Saikia, the learned Senior Counsel in his rejoinder has submitted that the fact of preferring a writ appeal has been disclosed in this application and the order itself dated 08.02.2024 has been annexed. He has also submitted that the application contains reasons for preferring this review application.

8. The rival submissions of the parties have been duly considered and the materials placed before this Court have been examined.

9. The parameters of entertaining a review application are well settled. The Hon'ble Supreme Court in the case of ***Kamlesh Verma Vs. Mayawati & Ors.*** Reported in (2013) 8 SCC 320 has laid down as follows:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.”

10. In the recent decision dated 18.08.2022 reported in **(2022) SCC OnLine 1034, (S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.)** a Three Judges' Bench of the Hon'ble Supreme Court has reiterated the aforesaid law laid down in the case of **Kamlesh Verma** (*supra*).

11. This Court is of the view that the grounds canvassed in this petition may be grounds which can be raised in an appeal wherein the correctness of the order dated 29.01.2024 can be put to challenge. However to make out a case of

review, it is incumbent upon a party to make out a case of error apparent on the face of the records or discovery of new facts which were not within the knowledge of the party or any other sufficient reasons. The grounds are mainly with regard to the interpretation of a particular clause of the RFP of which a *prima facie* view has been expressed by this Court and also with regard to certain documents of the private respondent which are alleged to be forged.

12. This Court is of the view that the grounds taken do not fulfil any of the aforesaid requirements. In any case, the initial order containing an observation of interim protection was an absolutely temporary one only to enable the State Counsel to obtain instructions and the matter was taken on the date fixed when instructions were placed before the Court. It may further be mentioned that by the order dated 29.01.2024, it was observed that all actions taken pursuant to the RFP in question would be subject to the outcome of the writ petition. This Court had also noticed that while withdrawing the writ appeal, no liberty to file a review was taken or granted and the liberty was only to file a fresh writ appeal.

13. In view of the above, this Court does not find any merits in this application and accordingly the same is dismissed.

JUDGE

Comparing Assistant