

GAHC040007072022



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

Case No. : PIL/13/2022

Kaku Potom
S/o Beyi Potom,
R/o Polo Colony Naharlagun,
PO/PS Naharlagun, District Papumpare,
PIN 791110
Arunachal Pradesh

Phone No.
940265692/813206916

VERSUS

THE STATE OF AP and 10 Ors.

Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar. Arunachal Pradesh. 2:The Commissioner (Power)

Age: 0

Occupation :

3:The Commissioner/Secretary

Age: 0

Occupation :

4:Chief Engineer (P)

Age: 0

Occupation :

5:Chief Engineer (P)

Age: 0

Occupation :

6:Executive Engineer (E)

Age: 0

Occupation :

7:Executive Engineer (E)

Age: 0

Occupation :

8:Executive Engineer (E)
Age: 0
Occupation :
9:The Commissioner/Deputy Secretary
Age: 0
Occupation :
10:M/s Nirvana Enterprises
Age: 0
Occupation :
11:M/s D.M Groups
Age: 0
Occupation

Advocate for the Petitioner : Nalo Pada

Advocate for the Respondent : GA (AP)

::BEFORE::

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT AND ORDER (ORAL)

29.05.2024

(K.R. Surana, J)

Mr. B. Kamdak, learned counsel appearing on behalf of the petitioner has submitted at the outset that he has been instructed not to appear for the petitioner as the petitioner would like to present his case in-person. It is also submitted that the case brief has also been taken away and accordingly, he prays for an adjournment.

2. We have taken note of the said submission. However, on the ground that the prayer for recusal of the learned counsel for the petitioner has not been

presented in accordance with the requirement of Rule 67 & 68 of Chapter-V of the Gauhati High Court Rules, the same cannot be accepted. Therefore, the learned counsel for the petitioner has stated that he does not have mandate to appear, this Court is inclined to proceed with hearing by treating as if the petitioner has remained unrepresented when the matter has been called up for hearing.

3. We have heard Mr. N. Ratan, learned Addl. Advocate General assisted by Mr. L. Perme, learned Standing counsel for the Power Department, representing the State respondent Nos. 1 to 5, 7 & 8; Mr. D. Pangging, learned counsel for respondent No. 6; Mr. O. Pada, learned Standing counsel for the SIC and Mr. P. K. Tiwari, learned Senior counsel assisted by Mr. K. Saxena, learned counsel for respondent Nos. 10 and 11.

4. This PIL has been presented under Article 226 of the Constitution of India. The petitioner is said to be a practicing Advocate and a social activist. By alleging rampant corruption and serious irregularities in action taken by the public functionaries, which has allegedly resulted in serious monetary loss to the State exchequer, this PIL has been filed.

5. In brief, the case of the petitioner is that the respondents in the Power Department, through the Executive Engineer (E), Bomdila Division, had issued a Notice Inviting Tender No.BED/DB/NIT/2019-20/1258-66 dated 21.12.2019 in connection with the work of "*System Strengthening of 33 KV, LT Line and Distribution System in West Kameng District under DDUGJY Scheme*". The

petitioner alleges that the manner in which the Detail Project Report was prepared, its approval and floating of the NIT to the execution of works were all done in complete violation of the CPWD Manual and the General Financial Rules, 2017 without adhering to the laid down norms, rules, standard operating procedures etc. It is further alleged that there was rampant corruption and nepotism in awarding of the works in pick and choose basis. Thus, it is alleged that the floating of the tender was a mere farce. It is also alleged that the approval and authorization for initiating the NIT was made on 17.12.2019 and accordingly, it is projected that it was physically impossible for the file to travel from the Head office in Itanagar to Bomdila Electrical Division on the same day. Accordingly, it is the case of the petitioner that the entire action of the respondent authorities in connection with the said NIT be investigated by lodging of an FIR.

6. The learned Senior counsel as well as learned counsel appearing for the respondents have vehemently opposed the nature of prayer made in this PIL. It has been submitted at the Bar that in the affidavit-in-opposition filed by the respondent Nos. 1 to 5, 7 & 8; additional affidavit filed by respondent No. 9; affidavit-in-opposition filed by respondent No. 6; and affidavit-in-opposition filed by respondent Nos. 10 & 11, the following Enquiry reports have been produced viz.,(i) Enquiry report dated 27.06.2022 by the Chief Engineer, Western Electrical Zone, Department of Power, Govt. of Arunachal Pradesh, Itanagar;(ii) Enquiry report dated 03.08.2022 by the Chief Engineer, Western Electrical Zone, Department of Power, Govt. of Arunachal Pradesh, Itanagar; and (iii)Acceptance of the report by the Commissioner (Vigilance), Govt of Arunachal Pradesh,

Itanagar vide letter dated 08.08.2022.

7. The learned counsel appearing for respondent No. 6 has specifically submitted that in response to the allegation made in paragraph-6 of the PIL, specific stand has been taken that as the value of the approved work was huge, all the concerned officials were camping at Itanagar and therefore, insofar as the Departmental authorities are concerned, every work related to the approval of the DPR and approval of the tender were all done in a transparent manner in the Office of the Power Department. It is submitted that all the concerned officials had worked in tandem because the project was of public importance for strengthening the power distribution system in the remote areas of the State of Arunachal Pradesh. It is further submitted there was some urgency as the tendering process was required to be issued within time bound period of 26.12.2019. Accordingly, it is submitted that there cannot be a presumption of any procedural lapse merely on the basis of an allegation that the approval was given on 17.12.2019.

8. We have examined the 2 (two) enquiry reports referred to hereinbefore and the acceptance letter dated 08.08.2022.

9. It is not for the Court to embark upon a judicial review of the contents of the enquiry report. The said reports prima facie disclose that the enquiry was done in appropriate manner. It is apposite to mention that the concerned authorities who had received the enquiry report had not found any discrepancy, irregularity or illegality in the preparation of the Detail Project Report, its

administrative approval as well as various steps taken for issuance of NIT.

10. In this PIL, it has not been disclosed as to how the petitioner arrived at a presumption of existence of corruption and nepotism in awarding of the works. As the petitioner is alleging that the works were awarded on pick and choose basis, it was the duty cast upon the petitioner to produce before the Court the documents to show that the selected bidders was handing glove with the other bidders and entire tendering system was a mere farce. That impression cannot be gathered from the materials produced by the petitioner. Therefore, in the absence of cogent materials produced by the petitioner, the Court would be slow to make a roving and fishing enquiry merely on the basis of a mere allegation by the petitioner.

11. In this PIL, the petitioner is seeking leave from this Court to direct the Commissioner/ Deputy Secretary, SIC, Govt. of Arunachal Pradesh (respondent No. 9) to register a report under Section 154 Cr.P.C., and to investigate the case with a further prayer to monitor the investigation of the case as well as the petitioner has made a prayer to direct a judicial enquiry into the complaint of the petitioner. In the context of the prayer and on perusal of the enquiry reports referred to hereinbefore, the Court is constrained to hold that the materials placed before this Court are insufficient for the Court to issue any direction to the respondent No. 9 to register an information of an cognizable case within the meaning of Section 154 Cr.P.C. In the absence of any *prima facie* satisfaction that a case for an investigation in enquiry has been made out, we do not see reason to either issue a direction for lodging of an FIR nor there is any

requirement for the Court to monitor investigation.

12. The learned Senior counsel for respondent Nos. 10 and 11 has cited the case of *M. Subramaniam and Another-vs-S. Janaki and Another*; reported in (2020) 16 SCC 728 for the purpose of supporting his submission that the High Court would not ordinarily issue a direction for registration of an FIR with a direction to the police to investigate and to file a final report and to further project that if the High Court starts entertaining such writ petitions, then they will be over-burdened with such writ petitions. It is also submitted that the said case is also cited on the point that if a complainant so desires, he may approach the Magistrate concerned under Section 156 (3) Cr.P.C. and if he does so, the Magistrate concerned will have jurisdiction to record his/her satisfaction and issue a direction for registration of the FIR and the Magistrate concerned would have also power to monitor such investigation.

13. The aforesaid legal proposition pronounced by the Supreme Court of India in the case of *M. Subramaniam and Another (Supra)* is also contained in the case of *Sakiri Vasu-vs-State of Uttar Pradesh*, reported in (2008) 2 SCC 209.

14. At this stage, we would also like to put on record that on a pointed query of the Court, the learned Addl. Advocate General, on being instructed by the learned departmental counsel has submitted that none of the participating bidders or any intending tenderers have approached this Court to challenge the tendering process by alleging that the manner in which the tender was floated was not in accordance with the law or that the tendering process was not

transparent and farcical exercise.

15. There is no material on record to show the manner in which the tender was floated was intended to favour any particular bidder or that there was any clause in the tender which would have an effect of restricted bidding. Therefore, the Court is of the considered opinion that apart from the fact that this PIL does not disclose cogent materials based on which any presumption can be drawn that there was any illegality in the tendering process. This Court also finds that the petitioner has no *locus-standi* to present this PIL.

16. In the view of the discussions as made in the foregoing paragraphs, this PIL stands dismissed.

17. As the petitioner is un-represented, we have refrained from imposing cost.

JUDGE

Comparing Assistant