

GAHC010157162018



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

Case No. : WA/291/2018

LUBI INDUSTRIES LLP
FORMERLY KNOWN AS M/S. MIRA INDUSTRIES, A LIMITED LIABILITY,
HAVING ITS REGD. OFFICE NEAR KALYAN MILLS, NARODA ROAD,
AHMEDABAD 380025 INDIA, AND IS REPRESENTED IN THE PRESENT
PROCEEDING BY ITS AUTHORIZED SRI PRAMOD GAUTAM, NATIONAL
HEAD DOMESTIC, INSTITUTIONAL and GOVT. BUSINESS, 1105A ADVANT.
NAVIS BUSINESS PARK, SECTOR 142 NOIDA 201305 U.P, INDIA.

VERSUS

STATE OF ASSAM AND 10 ORS
REP. BY THE ADDL. CHIEF SECRETARY, SOIL CONSERVATION DEPTT.,
GOVT. OF ASSAM, DISPUR, GHY.-06.

2:THE PRINCIPAL SECY.
GOVT. OF ASSAM
SOIL CONSERVATION DEPTT.
DISPUR GHY.-06.

3:STATE LEVEL NODAL AGENCY
INTEGRATED WATERSHED MANAGEMENT PROGRAM
ASSAM
OFFICE OF THE STATE LEVEL NODAL AGENCY IWMP
BHUMI SANGRAKSHAN BHAWAN
R.G. BARUAH ROAD
GHY.-05
AND IS REP. BY ITS CHAIRMAN.

4:CHAIRMAN

STATE LEVEL NODAL AGENCY IWMP
BHUMI SANGRAKSHAN BHAWAN
R.G. BARUAH ROAD
GHY.-05.

5:THE CHIEF EXECUTIVE OFFICER

STATE LEVEL NODAL AGENCY IWMP
BHUMI SANGRAKSHAN BHAWAN
R.G. BARUAH ROAD
GHY.-05.

6:THE PROJECT MANAGER

WCDC
AND PIA OF IWMP PROJECT ALL
BONGAIGAON.783380

7:THE PROJECT MANAGER

WCDC
AND PIA OF IWMP PROJECT ALL
DHUBRI.783301

8:THE PROJECT MANAGER

WCDC
AND PIA OF IWMP PROJECT ALL
GOALPARA. 783101

9:THE PROJECT MANAGER

WCDC
AND PIA OF IWMP PROJECT ALL
BARPETA. 781309

10:THE PROJECT MANAGER

WCDC
AND PIA OF IWMP PROJECT ALL
KOKRAJHAR. 783370

11:THE PROJECT MANAGER

WCDC
AND PIA OF IWMP PROJECT ALL
LAKHIMPUR. 78700

For the appellant : Mr. R. Baruah,
Mr. N.M. Dutta,
Mr. S. Kashyap, Advocates.

For the respondents : Mr. D. Saikia,
Advocate General, Assam,
Ms. R.S. Deori,
S.C., Soil Department
Ms. P. Baruah, Advocate

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

18-04-2024

(Vijay Bishnoi, C.J.)

1. This writ appeal is filed by the appellant being aggrieved with the judgment and order dated 21.06.2018 passed by the learned Single Judge in writ petition, being, WP(C) No.7787/2015 whereby the writ petition filed by the writ petitioner (appellant herein) has been dismissed with certain observations.

2. The brief facts of the case are that the writ petitioner/appellant has claimed that as per the requisition sent by the Executive Officer, State Level Nodal Agency (SLNA), it had supplied 4745 Centrifugal Pump of 2 HP. However, the State has refused to make payment of an amount of Rs.6.39 Crores approximately against the supply of the said Centrifugal Pump sets. The learned Single Judge after considering the case of the appellant as well as the respondents has dismissed the writ petition mainly for the following reasons:

a) no contract between the State and the appellant was executed as

required under Article 299 of the Constitution of India and no contract was executed by such person in such manner as may be authorised by the Governor in terms of Article 166 of the Constitution of India;

b) before issuing the supply order dated 19.02.2014 by the Chief Executive Officer, SLNA, no tender was invited;

c) the DPR was not provided for supply of 2 HP Centrifugal Pump-sets;

d) There was no budgetary provisions for procurement of 2 HP Centrifugal Pump-sets; and

e) the Pump-sets already supplied by the appellant has not been used by the respondents.

The learned Single Judge has also recorded a finding that while procuring the pump-sets, the mandatory provisions of Section 7 of The Assam Fiscal Responsibility and Budget Management Act, 2005 (for short '2005 Act'), were not followed.

3. However, while dismissing the writ petition, the learned Single Judge has clarified that if the appellant intends to take back the pump-sets already supplied by it, the same may be returned to the appellant within 30 days from the date of receipt of a written request made to that effect by the appellant, addressed to the Additional Chief Secretary to the Government of Assam, Soil Conservation Department.

4. The learned Single Judge has further clarified that notwithstanding this order and the return of the pump-sets, it would still be open to the writ petitioner to institute appropriate legal proceedings for damages and compensation on account of any loss or injury suffered by it due to the wrongful action of such person(s) responsible for the same.

5. Assailing the impugned judgment and order, Mr. R. Baruah, learned counsel for

the appellant has argued that though no contract between the appellant and the State respondents was executed in terms of Article 299 and Article 166 of the Constitution of India, by virtue of Section 70 of The Indian Contract Act, 1872 (for short '1872 Act'), the appellant is entitled for compensation as he has acted lawfully and delivered the pump-sets without any intension to do so gratuitously and the Government has enjoyed the benefit of the pump-sets.

6. It is contended that though the learned Single Judge has clarified that it is open to the appellant to institute appropriate legal proceedings for damages and compensation on account of loss or injury suffered by it, at the same time, an observation was made in the impugned judgment and order that the principles underlying Section 70 of the 1872 Act would not have any application in the facts of the present case. Learned counsel has submitted that the said observation made by the learned Single Judge is unwarranted as the appellant can very well demonstrate before the appropriate forum that all the three conditions mentioned in Section 70 of the 1872 Act are satisfied and therefore, the appellant is entitled for compensation. It is also submitted that in view of the said observation made by the learned Single Judge, the appellant cannot even approach the appropriate forum by instituting legal proceedings for compensation.

7. *Per contra*, Mr. D. Saikia, learned Advocate General, Assam appearing for the respondent State has supported the judgment dated 21.06.2018 passed by the learned Single Judge. However, he has submitted that for the purpose of seeking compensation in terms of Section 70 of the 1872 Act, the petitioner is required to adduce evidence that the three conditions mentioned in Section 70 of the 1872 Act have been fulfilled and the said question cannot be decided by this Court while entertaining the writ petition under Article 226 of the Constitution of India. It is contended that for seeking compensation, the appellant has to approach the appropriate forum and then to prove his case by adducing evidence.

8. Heard learned counsel for the parties and perused the material available on record.

After going through the impugned judgment and carefully scrutinising the material available on record, we are of the view that the learned Single Judge has rightly not interfered since no contract was executed between the appellant and the State in terms of Articles 299 and 166 of the Constitution of India. Further, the provisions of Section 7 of the 2005 Act have also not been followed before issuing the supply order to the appellant. The person, who has placed the order for supplying the pump-sets was not authorised to do so and without there being any justification, order for supplying the pump-sets was placed.

9. So far as the contention of the appellant regarding entitlement of compensation under Section 70 of the 1872 Act is concerned, we are of the view that the said question cannot be decided in a writ petition filed under Article 226 of the Constitution of India because the person, who is claiming compensation by invoking Section 70 of the Act, has to satisfy all the three conditions. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing the said thing or delivering the said thing, he must not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered, must enjoy the benefit thereof. For satisfying these conditions, the person is required to adduce evidence. Taking into consideration the above circumstances, we are of the view that the observations made by the learned Single Judge in the impugned judgment dated 21.06.2018 that the principles underlying Section 70 of the 1872 Act have no application in the facts of the present case, are unwarranted as the said observation may affect the appellant in case the appellant institute appropriate legal proceedings for compensation.

10. In such circumstances, we deem it appropriate to dispose of this writ appeal

while observing that the observations made by the learned Single Judge in the impugned judgment and order dated 21.06.2018 that the principles underlying Section 70 of The Indian Contract Act, 1872 has no application in the facts of the present case, are to be treated as deleted from the impugned judgment. However, rest of the order passed by the learned Single Judge is not interfered with.

Ordered accordingly.

JUDGE

CHIEF JUSTICE

Comparing Assistant