

GAHC030002402024



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

Case No. : WP(C)/27/2024

Sh. H Lalthianghlina
S/o H Dothuama (L)
R/o Chanmari, Serchhip

VERSUS

The State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram and 3 Ors.
Aizawl2:The Secretary to the Govt. of Mizoram
Public Health Engineering (PHE) Dept.
Govt. of Mizoram

3:The Engineer in Chief
Public Health Engineering (PHE) Dept.
Govt. of Mizoram

4:The Executive Engineer (EE)
Public Health Engineering (PHE) Dept

Advocate for the Petitioner : Mr C Lalramzauva Sr. Adv.

Advocate for the Respondent : Addl. AG/GA, Mizoram

ORDER

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

20.11.2024

Heard Mr. C. Lalramzauva, learned Senior Counsel for the writ petitioner assisted by Mr. J. Malsawmzuala, learned counsel. Also heard Ms. Caroline K. Lungawipuii, learned Government Advocate for all the respondents.

2. The petitioner has prayed for setting aside the Office Order dated 19.02.2024 issued by the Senior Executive Engineer, PHED, Serchhip WATSAN Division, by which 8 Work Orders, including the 4 Work Orders issued/allotted to the petitioner have been cancelled, on the ground that the same had been done without call of Tender. The case of the petitioner is that the petitioner had been allotted the following Work Orders without call of Tender:-

Sl. No	Work Order No.	Name of Work	Amount
1	No.W-11013/1/2019-PHEE(S)/36 Dt. 29.09.2023	Construction of RCC Reservoir 2 lakh lits cap at Vengchung under AMRUT 2.0 (GSWSS).	Rs.26,50,000.00
2	No.W-11013/1/2019-PHEE(S)/39 Dt. 29.09.2023	Construction of Valve Chamber under AMRUT 2.0 (GSWSS).	Rs. 2,40,000.00
3	No.W-11013/1/2019-PHEE(S)/41 Dt. 29.09.2023	Construction of Anchor Block at Tuikum Rising Main under AMRUT 2.0 (GSWSS).	Rs. 2,40,000.00
4	No.W-11013/1/2019-PHEE(S)/42 Dt. 29.09.2023	Construction of RCC Support Pillar at Tuikum Rising Main under AMRUT 2.0 (GSWSS).	Rs. 1,50,000.00

3. The petitioner's counsel submits that no notice was issued to the petitioner prior to the Work Orders being cancelled and as such, there has been a violation of the principles of natural justice. He also submits that the Work Order No. 1 relating to construction of RCC Reservoir had been taken up by the PHE Department as a departmental work and have completed the same.

4. The petitioner's counsel submits that as Contract Agreements have been executed by the parties, the petitioner should be allowed to do the works allotted to him.

5. The learned counsel for the petitioner further submits that Contract Agreements had been executed between the parties and the Security Deposit had been furnished in respect of 3 out of the 4 Work Orders, that is:- (i) Construction of RCC Reservoir work, (ii) Construction of the Valve Chamber and (iii) Construction of RCC Support Pillar. However, no Agreement was signed in respect of construction of the Anchor Block at Tuikum Rising Main and no Security Deposit had been submitted for the same.

6. Ms. Caroline K. Lungawipuii, learned Government Advocate for the State respondents, on the other hand submits that the Contract Agreements were not signed and Security Deposits were not furnished before the announcement of the Election to the Mizoram Legislative Assembly on 09.10.2023. She submits that the Cabinet Meeting held on 13.12.2023 had taken a decision that all Work Orders, which had already been issued and work not started at work site before announcement of Election Model Code of Conduct were to be stayed. She also submits that the cancellation of the Work Order of the petitioner by the impugned Order had been made, due to the works being allotted without

following any Tender process. She submits that as there is no infirmity with the decision of the respondents, the impugned Order should be upheld.

7. I have heard the learned counsels for the parties.

8. The admitted facts of the case is that the 4 Work Orders issued to the petitioner, had been made without call of Tender. The allotment had been done on the basis of a pick and choose policy by the respondents.

9. In the case of ***Nagar Nigam, Meerut Vs. AI Faheem Meat Exports (P) Ltd. & Others***, reported in ***(2006) 13 SCC 382***, the Supreme Court has held that all contracts by the Government should be granted only by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have the opportunity to make a bid in the tender process. The grant of contract works by inviting tenders is to be made to ensure that all official acts are transparent and inspire public confidence.

Paragraph 18 of the said Judgment is reproduced herein below:-

“18. The law, is thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the bid (sic auction), and there is total transparency. In our opinion this is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence.”

10. It is also an admitted fact that the petitioner had not started the works pursuant to the Work Orders, even though the petitioner had apparently submitted Security Deposit and executed Agreements for 3 of the Work Orders.

11. Though no notice had been issued to the petitioner prior to cancellation of the Work Orders, this Court is of the view that no prejudice can be said to have

been caused to the petitioner, as the very allotment of the Work Orders was in violation of the law laid down by the Supreme Court. There was total non-transparency and the pick and choose policy followed by the respondents can be said to be an arbitrary exercise and in violation of Article 14 of the Constitution of India.

12. In view of the above reasons, this Court finds that the non- issuance of the notice to the petitioner, prior to the issuance of the Office Order dated 19.02.2024 has not caused any prejudice to the petitioner. An illegal act cannot enclothe any person with any right, when the action in allotting a Work Order without call of Tender is arbitrary/bad in the first instance. The illegal act cannot be rectified by allowing the petitioner to act on the illegal Work Orders.

13. In the present case, the State respondents have rectified the situation by cancelling the illegal Work Orders.

14. In view of the reasons stated above, this Court does not find any reason to exercise it's discretionary power in this case.

The writ petition is accordingly dismissed.

15. However, the respondents should return back the Security Deposits deposited by the petitioner, if any, immediately.

JUDGE

Comparing Assistant