



Serial Nos.02&03
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.36/2024 with
MC (WA) No.18/2024
WA No.38/2024 with
MC (WA) No.20/2024

Date of CAV: 25.08.2025

Date of Pronouncement: 01.09.2025

Meghalaya Power Generation Corporation Limited (MePGCL),
represented by the Chief Engineer, Meghalaya Power Generation
Corporation Limited (MePGCL), Lumjingshai, Short Round Road,
Shillong-793001, East Khasi Hills District, Meghalaya. Appellant

Vs.

1. Shri Odimar Syiemsad
2. Shri Taibin Warjri
3. Smti. Connie F. Sawkmie
4. Shri Collingstar Sawkmie

..... Respondents

Taibin Warjri

..... Appellant

Vs.

1. Odimar Syiemsad
2. The State of Meghalaya represented by the Commissioner & Secretary,
Meghalaya Power Generation Corporation Limited, Office of the Chief
Engineer (C) Maintenance and Small Hydro, Lumjingshai, Short Round
Road, Shillong-793001.
3. Sri. H.W. Lyngdoh Mawnai, Chief Engineer (C) Maintenance and
Small Hydro,
Meghalaya Power Generation Corporation Limited, Meghalaya, Short
Round Road, Shillong-793001.
4. The Director (Generation), Meghalaya Power Generation Corporation
Limited, Meghalaya, Short Round Road, Shillong-793001.
5. The Director (Transmission), Meghalaya Power Generation
Corporation Limited, Meghalaya, Short Round Road, Shillong-793001.



6. The Secretary, Special Purpose Vehicle Society, Short Round Road, Shillong-793001.

7. The Company Secretary, Meghalaya Electric Corporation Limited, Short Round Road, Shillong-793001.

8. The Chief Accounts Officer, Meghalaya Electric Corporation Limited, Short Round Road, Shillong-793001.

9. The Executive Engineer (MIS), Meghalaya Electric Corporation Limited, Short Round Road, Shillong-793001. Respondents

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance in WA No. 36 of 2024:

For the Appellant : Mr. A.S. Pandey, GA
Ms. R. Colney, GA
For the Respondents : Mr. S. Dutta, Sr. Adv. With
Mr. I. Lahiri, Adv
Mr. P. Sengupta, Adv for R/1
Ms. S. Parveen, Adv for R/2

Appearance in WA No. 38 of 2024:

For the Appellant : Ms. S. Parveen, Adv
For the Respondents : Mr. S. Dutta, Sr. Adv with
Mr. I. Lahiri, Adv
Mr. P. Sengupta, Adv for R/1.
Mr. A.S. Pandey, GA
Ms. R. Colney, GA for R/2-9

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |

Note: For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.



(Made by Hon'ble, the Chief Justice)

Two contractors are at war. They are Odimar Syiemsad and Taibin Warjri. Two appeals were collectively heard by us. One of the appeals [WA No.36 of 2024] was preferred by the Meghalaya Power Generation Corporation Limited (MePGCL) where both Odimar Syiemsad and Taibin Warjri were respondent Nos.1 and 2. The other appeal was preferred by Taibin Warjri [WA No.38 of 2024] where the others were respondents. Both the appeals were against a judgment and order dated 7th June, 2024 passed in the writ petition [WP (C) No.34 of 2024] preferred by Odimar Syiemsad.

The cause of action arose in the following manner.

On 4th July, 2023, Meghalaya Power Generation Corporation Limited made a public announcement by an advertisement inviting tenders for construction of an indoor stadium in Nongtraï village, Mawsynram, East Khasi Hills. The last date for submission of tenders was 26th July, 2023.

I have not been able to appreciate the logic in fixing the minimum bid price of ₹2,87,89,896.00/-. Usually in works contracts, a reserve price is fixed below which offers would not be entertained. Normally, in these tenders, the person inviting tenders is the prospective seller or vendor and



would not sell the tendered item below a particular price. This person could be the government or any government agency also. But when the tender is for accepting the offer of the lowest eligible bidder for construction of a stadium fixation of a minimum amount is contrary to logic and reason and not understood by me.

There were five tenderers. Four of them are parties in these appeals. One of them Mostophar Kharkongor was not impleaded. Four of the tenderers including Mostophar Kharkongor but excluding Odimar Syiemsad made identical bids on 26th July, 2023 the last date for submission of tender.

Odimar Syiemsad also submitted his tender on the last day but his offer was about Re.1 more than the others.

Between 26th July, 2023 and 6th February, 2024 technical bids followed by financial bids were submitted and considered by the Tender Committee.

On 7th February, 2024, the Tender Committee called a meeting of the four tenderers who had bid for the same minimum price of ₹2,87,89,896.00/-. The Committee, it appears persuaded these four bidders to mediate and select one of them who would take the contract and the others would then voluntarily bow out of the tender process. As



recorded in the minutes of the meeting of that day, the four bidders, Mostophar Kharkongor, Odimar Syiemsad, Taibin Warjri and Connie F. Sawkmie deliberated at the meeting and decided to give up their claims to facilitate award of the contract to Taibin Warjri.

On 15th February, 2024, the contract described as a work order was awarded to Taibin Warjri by a communication made by the Meghalaya Power Generation Corporation Limited stating that his offer had been accepted and he was required to execute a formal agreement and comply with some routine formalities.

This letter went to the extent of instructing Taibin Warjri to start the work immediately in consultation with the concerned Superintending Engineer and further that it should be completed within 18 months from the date of issue of this communication.

Contemporaneously, Odimar Syiemlieh preferred the instant writ petition before this Court. The main grounds were as follows:

The 15th February, 2024 work order issued by the Meghalaya Power Generation Corporation Limited did not constitute a valid contract between the parties. It was still at the negotiation stage inasmuch as Taibin Warjri was asked to obtain some statutory clearances. No formal agreement was executed between the parties. Hence, there was no



concluded contract between Taibin Warjri and the Meghalaya Power Generation Corporation Limited. The assertion in the affidavit filed by the State that Taibin Warjri had commenced the work on 16th February, 2024 was absolutely incorrect because immediately on obtaining a work order Taibin Warjri could not start the work before getting the said clearances. At any rate, it was impossible for the contractor to start the work one day after issuance of the work order.

The Tender Committee did not carry out any technical evaluation of bids.

When the margin between the bids was Re1, the technical correspondence of each bidder should have been considered. If that were done, Odimar Syiemsad would have been successful in getting the tender.

Secondly, when the other bidders were called, Odimar Syiemsad was left out. He also should have been invited.

At any rate, Odimar Syiemsad should have been granted half the tender value of the work.

On 27th February, 2024, a learned single judge admitted the writ petition, did not pass any interim order restraining execution of the contract but observed that the contract would abide by the result of the writ petition.



According to Taibin Warjri after receiving the work order on 15th February, 2024, he started and continued with the work as there was no interim order restraining him from doing so.

On 7th June, 2024, the writ petition was allowed.

By the impugned judgment and order the learned Judge expressed his opinion that the bidders had formed a cartel to bid for the tender. The entire tender process lacked transparency. The award of contract in favour of Taibin Warjri was set aside. The tender process was also set aside with a direction to call a fresh tender. It was then that he stopped the work. This amount of work allegedly done by Taibin Warjri is seriously disputed by Odimar Syiemsad, so much so, that this Court had to direct learned counsel appearing for the Meghalaya Power Generation Corporation Limited to file an affidavit certified by their engineer as to the percentage and value of the work done by Taibin Warjri. Such an affidavit affirmed on 19th June, 2025 has been filed in Court according to which, 7.29 per cent of work commenced on 16th February, 2024 and valued at ₹23,07,105/- was done before it was stopped on 6th June, 2024.

Since then, there has been no resumption of work.

Between 5th July, 2024 and 8th July, 2024 these appeals were preferred by Odimar Syiemsad and the Meghalaya Power Generation



Corporation Limited. The records depict that only on 25th October, 2024 they were formally admitted by this Court with directions for getting the appeals ready for hearing as early as possible and with an observation that since the work was in abeyance, there was no need for consideration of any interim order of a consideration of stay of the impugned judgment and order.

Mr. Dutta, learned Senior Advocate appearing for Odimar Syiemsad cited *Xcellance Medical Technologies Private Limited v. HLL Infra Tech Services Ltd. & anr* reported in *2021 SCC Online Del 4635*. It was a Division Bench judgment of the Delhi High Court which relied on a Supreme Court decision in *Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.* reported in *(2007) 8 SCC 1*. The proposition sought to be advanced was that a tender process started by the government or government agency should promote competition amongst a wide range of equally placed prospective bidders so that the tender may be considered on a “level playing field”. This was in conformity with Article 19 of the Constitution of India which conferred the right to do business, on citizens. It was also in conformity with Article 14 and Article 21 of the Constitution which conceptualized a meaningful



right to life which is free from inequality, discrimination, arbitrariness and promotes fair play and justice.

Learned counsel also cited *Tractor and Farm Equipment Ltd., Chennai v. Secretary to the Govt. of Assam, Dept. of Agriculture, Gauhati & ors* reported in *AIR 2004 Gauhati 73* a Division Bench judgment of the Gauhati High Court followed by a judgment of the Supreme Court in *Management of Narendra & Company Private Limited v. Workmen of Narendra & Company* reported in *(2016) 3 SCC 340* and *N. Ramachandra Reddy v. State of Telangana & ors* reported in *(2020) 16 SCC 478*.

The proposition of law laid down in those judgments can only be taken as one applicable to the special circumstances of the case before the court and can never be applied as a general principle of law. The proposition of law is that in an intra-court appeal in the High Court, the appellate court should not interfere with the finding of facts entered by the learned single judge but only do so if such finding is perverse. According to those rulings, an appellate court should not substitute its view for that of the learned single judge because it is in its opinion a better view. Furthermore, an intra-court appeal should not be taken as a regular appeal under the civil or criminal procedure codes.



Thereafter, Mr. Dutta relied on two decisions of the Supreme Court in *Kedar Nath Motani & ors v. Prahlad Rai & ors* reported in *AIR 1960 SC 213* relied upon in *G.T. Girish v. Y. Subba Raju (Dead) by Legal Representatives & anr* reported in *(2022) 12 SCC 321* wherein the Court held, following old english common law and Section 23 of the Indian Contract Act, 1872 that the Court would not lend its hand to enforce against the defendant at the instance of a plaintiff, a contract tainted with illegality.

Taibin Warjri or Meghalaya Power Generation Corporation Limited could not claim any equity in their favour, either, according to the learned counsel citing *Raghunath Rai Bareja & anr v. Punjab National Bank & ors* reported in *(2007) 2 SCC 230*. However, the Court in the above case added that if such illegality was not part of the essential dealings between the parties but was something ancillary and did not touch the root of the contract, the Court would not entertain the plea of illegality raised by the defendant.

Learned counsel submitted that this contract entered into by Meghalaya Power Generation Corporation Limited with Taibin Warjri was so tainted with illegality that the learned single judge has very rightly set aside the award of tender.



Mr. A.S. Pandey, learned counsel appearing for the appellant-Meghalaya Power Generation Corporation Limited cited the recent decision in *Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & ors* reported in *2023 SCC Online SC 671* where the highest Court laid down the following dictum with regard to interference by the Court in government contracts entered into by inviting tenders. Paragraphs 52 to 54 are set out herein below:

“52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in *Association of Registration Plates v. Union of India*, reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.*, reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-



making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in *Jagdish Mandal v. State of Orissa*, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

In this Court, the law applicable to appeals is different. Chapter-V rules 1, 2 and 3 provide that writ appeals/letters patent appeals arising from orders of the single judge in a writ petition shall be heard by a Division Bench of two judges. Although, this Court was established after coming into force of the Constitution, by enactment and not under Letters Patent as some High Courts were under British rule, the principle and procedure for filing and hearing an appeal under the Letters Patent would apply to this High Court by operation of the above rules. Letters Patent Appeals are akin to those in order XLI of the Civil Procedure Code read



with Section 96 thereof. Therefore, a writ appeal in this Court is not a mere intra-court scrutiny of proceedings as dealt with by the Supreme Court in *Management of Narendra & Company Private Limited v. Workmen of Narendra & Company* reported in (2016) 3 SCC 340, but a full-fledged appeal to be heard by a Division Bench.

The dicta laid down by the Supreme Court in *Jagannath v. Arulappa & anr* reported in (2005) 12 SCC 303, *Manjula & ors v. Shyamsundar & ors* reported in (2022) 3 SCC 90 and *BTL EPC Ltd. v. Macawber Beekay Pvt. Ltd & ors* reported in 2023 SCC Online SC 1223 would more aptly apply to this first appeal. In these cases, the Supreme Court analysed the powers of the first appellate court, inter alia, to scrutinise and reevaluate threadbare the premises on which the trial court proceeded and its findings both on facts and in law.

It is quite intriguing that all the four bidders bid at the lowest eligible price. It is equally intriguing that the four bidders fixed their bid amount at the lowest permissible level. All the bids were equal. Odimar Syiemsad was one rupee more. All these five bids were submitted on the same day i.e. last date for submission of bids. Therefore, it is quite likely that there was some kind of connivance between the four bidders. For example, it may have been arranged between them that at the time of



consideration of the tender, three out of the four tenderers would withdraw their offer so that the tender went to the fourth. The three tenderers would be given some benefit of the contract by the fourth. But this is in the realm of conjecture.

It is also to be taken into account that Meghalaya is a small State where there are not too many contractors with the specialised skill of constructing a stadium.

It is also true that bids were invited by public announcement or public advertisement in the media. Even if, the five tenders involved in the contract had formed a cartel, there was no embargo for other tenderers to make bids. Apart from the five tenderers, there was no bid.

Moreover, one could have understood if all the bidders bid at a price far above the minimum and unreasonably high compelling the Tender Committee to accept one of the bids at an extraordinarily high price. Then it could have been said that the tender process was manipulated by formation of a cartel.

Therefore, in my opinion there was not enough evidence before the learned single judge to hold that the tenderers were operating as a cartel.

Responding to the submission on behalf of Taibin Warjri, the Meghalaya Power Generation Corporation Limited produced evidence to



show that the Technical Evaluation Committee had conducted a proper technical evaluation.

I would accept this statement. An unsuccessful tenderer should not be encouraged to question the merit of technical evaluation as that would open a flood gate of litigation by them in each and every tender process.

It is equally surprising that the four lowest tenderers were called for settlement amongst themselves by the tender authority. This was the exclusion of Odimar Syiemsad. Very quietly three tenderers backed out of the scene. The contract was promptly awarded to Taibin Warjri. It could have been proper for the Tender Committee to call Odimar Syiemsad also and conduct an auction to get the lowest price, even below the minimum specified in the tender, which power every Tender Committee usually enjoys.

When all the tenderers qualified in the technical bid and four, out of them made identical financial bid, it is natural that the members of the Tender Committee faced a dilemma as to whom to select. Of course, in such a situation it was open to the members of the Committee to go into the technical qualifications, background, experience and competence of the tenderers and rate them individually.



Usually, the technical bid stage is taken as an eligibility stage or a qualification proof stage. Once eligibility or qualification is found to be present, the Committee usually does not rate the tenderers on technical competence. All technically eligible tenderers are invited to participate at the financial bid stage. Therefore, I do not think it was a flaw or mistake by the Committee in not making a further technical competence evaluation of each tenderer. Hence, when these four financial bids were similar, it was not an incurable mistake made by the Tender Committee to invite these four tenderers for a meeting. Theoretically, they were right in not calling Odimar Syiemsad because his bid was one rupee more and thus he did not share the status of the lowest financial bidder.

When the meeting was convened, all except Taibin Warjri revoked their offers and walked out, according to the records. So, the contract was awarded to Taibin Warjri.

In my opinion, some injustice has been caused to Odimar Syiemsad. First of all when four, out of five bids were the lowest and similar and the fifth bidder's bid was one rupee more, all five bidders ought to have been called at the meeting and the lowest rate offered should have been recorded. Even if three tenderers backed out at that stage Taibin Warjri and Odimar Syiemsad ought to have been asked to



revise their rates so that the members of the Selection Committee could chose the lower of the two bids. Additionally, proper evaluation ought to have been made of the quality of the technical bids of each tenderer, so as to select the best bidder.

In summary, I would say that Odimar Syiemsad had some legitimate expectation. Therefore, he was deprived of his legitimate expectation of being considered for award of the tender.

There is a twist in the tale. There was no injunction restraining Taibin Warjri from proceeding with the work. He accordingly proceeded.

In the course of hearing of the appeal, we summoned the official records. The officials entrusted with the work produced some statistics which showed that 7.29 percentage of the work had been accomplished when work stopped.

It would be very harsh on Taibin Warjri, if the entire contract was cancelled and the Meghalaya Power Generation Corporation Limited directed to initiate a fresh process of selecting a tenderer. A substantial sum may have been spent by Taibin Warjri in accomplishing the above percentage of the work.

Although the tender process may not have been perfect, it cannot be said that the award of tender to Taibin Warjri was illegal or wrongful



or liable to be set aside [See *Association of Registration Plates v. Union of India*: (2005) 1 SCC 679 and *Air India Ltd. v. Cochin International Airport Ltd.*: (2000) 2 SCC 617].

I would not impute any impropriety among members of the Tender Committee.

In the circumstances it would be just and equitable if Odimar Syiemsad was awarded some compensation for being deprived of his legitimate expectation of being considered to be awarded the contract.

The Hon'ble Supreme Court in *M/s A.T. Brij Paul Singh & Bros v. State of Gujarat* reported in *AIR 1984 SC 1703* has estimated the normal profit in a works contract to be 15% of the value of the work. For this deprivation of legitimate expectation, I would award Odimar Syiemsad 7.5% of the value of the work i.e. ₹21,59,242/- to be paid to him by Meghalaya Power Generation Corporation Limited within four weeks of this order as compensation. This in my opinion would do adequate justice to him and to Taibin Warjri.

The award of contract in favour of Taibin Warjri is upheld. The impugned judgment and order is set aside.



The appeals are partly allowed on the above terms and to the above extent.

MC (WA) No.18 of 2024 and MC (WA) No.20 of 2024 are disposed of.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice