

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLN. 819 OF 2016

IN

WRIT PETITION NO. 4273 OF 2016 (D)

Nagpur Metro Rail Corporation Ltd., thr. its General Manager

-vs-

M/s. GYT-TPL, Jt. Venture, Pawai, Mumbai

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.S. K. Mishra, Sr. Counsel with Mr. K.C.Deogade, counsel for the
applicant/original respondent.

Mr. M.G.Bhangde, Sr. Counsel with Mr. P. V. Rajurkar, counsel for the non-
applicant/original petitioner.

CORAM : SMT. VASANTI A NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 12.08.2016.

By this miscellaneous civil application, the applicant-original respondent-Nagpur Metro Rail Corporation Limited has sought a review of the judgment, dated 28.07.2016 in Writ Petition No.4273 of 2016.

At the outset, it would be necessary to note that when Writ Petition No.4273 of 2016 came up for admission and hearing for the first time in this Court on 27.07.2013, the learned counsel for the original respondent (applicant in this miscellaneous civil application)-Nagpur Metro Rail Corporation Limited sought time only till the next day to make the submissions. On the next day, i.e. on 28.07.2016, when the matter came up for hearing, it was informed to this Court by the learned senior counsel for Nagpur Metro Rail Corporation Limited that this Court may not pass any interim orders and stall the Nagpur Metro Rail Project, as the learned senior counsel was ready to make the submissions on merits on the grounds raised on behalf of the petitioner against the disqualification of the petitioner-Joint Venture Company's technical bid. It was clearly stated that the matter could be heard on the said date only and could be finally disposed of,

either way. It is in this background, in view of the request that the matter should be decided finally, as the counsel for the Nagpur Metro Rail Corporation Limited was prepared, that we took up the matter for final disposal on 28.07.2016. The arguments were advanced on both the sides on the said date on the merits of the matter and by our judgment, dated 28.07.2016, we had allowed the writ petition and had held that the disqualification of the technical bid of the petitioner was bad-in-law and the Nagpur Metro Rail Corporation Limited should open the financial bid of the petitioner-Joint Venture Company and consider the same along with the other eligible bidders.

Since the review application is filed, it would be necessary to state some facts and mention about same submissions, that were made in this Court on 28.07.2016. The tender was floated by Nagpur Metro Rail Corporation Limited for the design and construction of a viaduct in Phase-III between Jhansi Rani Square and Lokmanya Nagar Stations on the East-West Corridor of Nagpur Metro Rail Project. As per Clause 4.2 (In the tender conditions), a tenderer, i.e. a prime contractor or a joint-venture member should have completed a contract in a metro civil construction work and should have completed a viaduct of length of not less than five kilometers in the same contract and also should have received minimum INR 3200 million for the said contract. It was informed to this Court on the said date of hearing by the learned senior counsel for the Nagpur Metro Rail Corporation Limited that the technical bid of the petitioner-Joint Venture Company was rejected only because the Joint Venture Company had not completed the contract of construction of a viaduct of a length of not less than five kilometers for a metro rail. It was clearly stated and the submission is recorded in our judgment, dated 28.07.2016 that the petitioner had constructed a viaduct for a high speed rail project and not for a metro rail project. Since the technical bid of the petitioner-Joint Venture Company was rejected solely on that ground, we considered the copy of the original document that was supplied to the petitioner by Guangdong Yuantian Engineering Company Limited, as early as in October, 2015, i.e. even before the floating of the e-tender by the Nagpur Metro Rail Corporation Limited, with which we are concerned

in this case while deciding the writ petition. After hearing the parties at length, we had, by the judgment dated 28.07.2016, held that the rejection of the technical bid of the petitioner was improper and hence, we had directed the Nagpur Metro Rail Corporation Limited to open the financial bid of the petitioner and consider the same along with the other eligible bidders.

A review of our judgment, dated 28.07.2016 was sought yesterday i.e. on 11.08.2016 at the behest of some other eligible tenderer. We had refused to grant leave to the tenderer to file a review as the eligible tenderers would not have been the necessary parties to the petition where the disqualification of its technical bid was challenged by one tenderer and the bids were not finalised. Today, a review of our judgment, dated 28.07.2016 is sought by the Nagpur Metro Rail Corporation Limited.

Shri S. K. Mishra, the learned senior counsel for the applicant-Nagpur Metro Rail Corporation Limited, submitted that the judgment, dated 28.07.2016 is liable to be reviewed, as certain misleading statements were made by the petitioner in the writ petition and the Chinese document, that was supplied to the petitioner by Guangdong Yuantian Engineering Company Limited was wrongly translated by the petitioner. It is stated by referring to the three translations made from the translators in India that the Chinese document pertaining to the completion of the work by the petitioner-Joint Venture Company in China, that was issued by the Guangdong Yuantian Engineering Company Limited, was wrongly translated and on the basis of the wrongful translation made on behalf of the petitioner, this Court has decided the writ petition. It is stated that what was required by the Nagpur Metro Rail Corporation Limited was a segmental viaduct and the petitioner did not have any experience in construction of a segmental viaduct of a length of more than five kilometers. It is stated that since the judgment is based on a wrongful translation of the original Chinese document that was supplied to the petitioner by Guangdong Yuantian Engineering Company Limited, the judgment is liable to be recalled and the petition filed by the petitioner-Joint Venture Company is liable to be dismissed.

Shri M. G. Bhangde, the learned senior counsel for the non-applicant-original petitioner-Joint Venture Company, has vehemently opposed the prayer made in the review application. It is submitted that the petitioner had not made the translation of the Chinese document and the document that comprises of four pages was supplied to the petitioner-Joint Venture Company by the Guangdong Yuantian Engineering Company Limited in October, 2015, i.e. much before the floating of the e-tender in this case. It is submitted that the petitioner has not translated the document and the second page of the four page document, which according to the Nagpur Metro Rail Corporation Limited is a translation made by the petitioner, is a document supplied to the petitioner by Guangdong Yuantian Engineering Company Limited. It is stated that the petitioner had not got the Chinese document translated and the so called translation, that is alleged at the behest of the petitioner is a part of the document that is supplied to the petitioner by Guangdong Yuantian Engineering Company Limited, in October, 2015. It is stated that with a view to ensure whether the petitioner had completed the work, as stated in the document, the Nagpur Metro Rail Corporation Limited had enquired from the Guangdong Yuantian Engineering Company Limited whether the petitioner had actually completed the said contract and the said fact was verified during Phase-I of the work of Nagpur Metro Rail Project, though we are concerned here with Phase-III of the same project. It is stated that the claim of the Nagpur Metro Rail Corporation Limited that the petitioner had deliberately translated the document in such a fashion so as to help the claim of the petitioner, is totally false and baseless. It is reiterated that the so called translation, is a part of the document, that was supplied to the petitioner by Guangdong Yuantian Engineering Company Limited in October, 2015.

On hearing the learned senior counsel for the parties, we find that no ground is made out by the Nagpur Metro Rail Corporation Limited for reviewing the judgment, dated 28.07.2016. It is surprising that though the Nagpur Metro Rail Corporation Limited was in a great hurry on 28.07.2016 to ensure that the matter does not linger and is decided at the earliest, the Corporation made the enquiries in respect

of the document, that was supplied to the petitioner by Guangdong Yuantian Engineering Company Limited, after we rendered the judgment on 28.07.2016. If at all, the Corporation wanted some time to file the submissions, this Court would have surely granted the same. However, on 28.07.2016, a statement was made on behalf of the Corporation that this court may not grant any time in the matter and decide the petition either way on the basis of the submissions made on behalf of the parties. Now, after the judgment is rendered, an enquiry is said to have been made by the Corporation in regard to a Chinese document, which according to the Corporation, is wrongfully translated by the petitioner-Joint Venture Company. While hearing the original petition also, it was stated and today also, a statement is made on behalf of the petitioner-Joint Venture Company that the Joint Venture Company has not translated the document at all and the so called translation is a part of the four page document, that was supplied to the petitioner-Joint Venture Company by Guangdong Yuantian Engineering Company Limited. The assertion made on behalf of the Joint Venture Company that the document is not translated by the petitioner and the same was supplied to it by the Guangdong Yuantian Engineering Company Limited is not seriously disputed by the Nagpur Metro Rail Corporation Limited. If the document is not translated by the petitioner at all, and if it is a part of the document that was supplied to the petitioner by Guangdong Yuantian Engineering Company Limited, we are not in a position to accept the submission made on behalf of the Nagpur Metro Rail Corporation Limited that the petitioner has translated the document mischievously with a view to mislead this Court and point out that the petitioner's technical bid could not have been disqualified. We are also surprised that on the date on which the judgment was rendered, these facts were not brought to the notice of this Court and the whole matter was argued only with a defence that the petitioner-Joint Venture Company had not constructed a viaduct for a metro rail project and had constructed the same for a high speed rail project. Only by considering the said defence or reply on behalf of the Nagpur Metro Rail Corporation Limited, we had decided the writ petition. The point that is now sought to be

canvassed before this Court was not canvassed in the Court before the judgment was rendered. Even if, the said point would have been canvassed, as stated on behalf of the petitioner-Joint Venture Company, if the petitioner-Joint Venture Company has not translated the document, there was no question of accepting the said submission of the Nagpur Metro Rail Corporation Limited, even if it was made on the said date of hearing. It is also necessary to note that on the previous date of hearing on which the judgment was rendered, it was not the case of the Nagpur Metro Rail Corporation Limited that the petitioner-Joint Venture Company had not constructed a segmental viaduct and this point is sought to be raised now for the first time in the review application. We fail to gauge, why the Nagpur Metro Rail Corporation Limited is ensuring the elimination of the petitioner-Joint Venture Company. Normally, in a review application, the Court is not duty bound to give reasons for rejecting the review application, but since the matter pertains to an important project, this Court finds it necessary to give some reasons for rejecting this review application.

Since no ground is made out for reviewing the judgment, dated 28.07.2016 in Writ Petition No.4273 of 2016, we dismiss the miscellaneous civil application with no order as to costs.

JUDGE

JUDGE

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 12/08/2016