Item No. 3
(Video Conferencing)

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P. (C) No. 431 of 2020

Manipur Social Service Organization, Regd. No. 95/M/SR/2004 having its registered office at Lamphel Super Market, Imphal West District, P.O. Imphal, P.S. Lamphel through its Secretary Keisham Ningthembir, aged about 55 years old, S/O (Late) K. Jatra Singh, a resigent of Chanam Sandrok Mamang Leikai P.O. Singjamei, P.S. Irilbung, Imphal East District, Manipur – 795008.

……. ***Petitioner***

- Versus –

1. The State of Manipur through the Principal Secretary / Commissioner /Secretary (MAHUD), Government of Manipur, Secretariat Block, P.O. & P.S. – Imphal – 795001.
2. The Director, (MAHUD) Manipur, Secretariat Block, P.O. & P.S. – Imphal, Manipur – 795001.
3. The Imphal Municipal Corporation through the Municipal Commissioner, Imphal Municipal Corporation, Secretariat Block, P.O. & P.S. – Imphal, Manipur – 795001.
4. M/S S.M. Agency, Khurai Kongpal Chingangbam Leikai, P.O. & P.S. Porompat through its proprietor namely M. Sanajaoba Singh a resident of Khurai Kongpal Chingangbam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur – 795 005.

…. ***Respondents***

BEFORE

HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR

For petitioner	:	Mr. H.S. Paonam, Sr. Advocate
For respondent No. 1 & 2	:	Mr. Athouba Khaidem, G.A.
For respondent No. 3	:	Mr. Y. Nirmolchand, Sr. Advocate
For respondent No. 4	:	None Appears
Date of Order	**:**	**04.08.2020**

ORDER

[1] Heard Mr. HS Paonam, learned senior counsel appearing for the petitioner, Mr. Athouba Khaidem, learned G.A. for the respondent No. 1 & 2 and Mr. Y. Nirmolchand, learned senior counsel appearing for respondent No. 3 / the Imphal Municipal Corporation. Notice to respondent No. 4 was served by dasti and information was also given by the Municipal Commissioner, represented by Mr. Y. Nirmolchand, learned senior counsel, and the same is recorded in later part of the order.

[2] The writ petition has been filed challenging the order dated 23rd May, 2020, passed by the Municipal Commissioner, Imphal Municipal Corporation (Annexure-A/10) which reads as follows :-

> ***OFFICE OF THE***
> ***IMPHAL MUNICIPAL CORPORATION***
>
> ***ORDER***
> ***Imphal, 23rd May, 2020***
>
> ***No. IMC/385/P-X/2000:-*** *In supersession of all the previous Orders in this regards, the Imphal Municipal Corporation is pleased to appoint the* ***Shri M. Sanajaoba Singh, Proprietor M/s SM Agency*** *of Khurai Kongpal Chingangbam Leikai for operation and maintenance of Public toilets namely* ***"Public Toilet at Sareng Gali"*** *@ 8000/- (Rupees eight thousand) only per month as Public toilets management fee to Imphal Municipal Corporation for 36 (thirty six) months w.e.f. 28/05/2020.*
>
> *The Agent/Firm should deposit an amount of Rs. 24,000/- (8000 x 3 months) (Rupees twenty four thousand) only as security deposit within 3 days from the issue of this Order.*
>
> *The firm will pay water supply and electricity charges as per their consumption by installing separate meters which will also be installed by the firm and any breaking or damage cause to the toilet will be immediately repaired by the firm/organization.*
>
> *In case of any default or non-payment of monthly fee/Tax to Imphal Municipal Corporation for 3 (three) consecutive months, the Order shall be cancelled without giving any prior information.*
>
> *Sd/-*
> *K. Chandrakumar Singh)*
> *Municipal Commissioner,*
> *Imphal Municipal Corporation"*

[3] The grievance of the petitioner is that the impugned order dated 23.05.2020 (Annexure-A/10) issued in favour of respondent No. 4 is without issuing a public tender and that no opportunity was given to any other eligible persons including the petitioner. Hence arbitrary and has to be set aside.

[4] On 27.07.2020, notice was issued. Mr. Athouba Khaidem, learned Government Advocate took notice for respondent No. 1 & 2 and Mr. Y. Nirmolchand, learned senior counsel took notice for respondent No. 3/ Imphal Municipal Corporation. Petitioner was directed to take step for service of notice upon respondent No. 4 by dasti. Accordingly, an affidavit dated 28.07.2020 was filed by the petitioner enclosing proof of service upon respondent No. 4 on 27.07.2020. Respondent No. 4 did not choose to appear. Thereafter on 29.07.2020, the case was listed and the following interim order was passed :-

> ***[5]*** *Be that as it may, one mistake cannot be a justification for another. In such view of the matter, there will be interim stay of the impugned proceeding dated 23rd May, 2020 (Annexure-A/10) till 03.08.2020. Mr. Y. Nirmolchand, learned senior counsel appearing for respondent No. 3 has requested to take instruction. Interim stay till next date of hearing.*

Thereafter, when the case was once again listed on 03.08.2020, none appeared for respondent No. 4, and the following order was passed

> "*Heard Mr. HS Paonam, learned senior counsel appearing for the petitioner, Mr. Athouba Khaidem, learned G.A. for the respondent No. 1 & 2 and Mr. Y. Nirmolchand, learned senior counsel appearing for respondent No. 3 / the Imphal Municipal Corporation.*
>
> *Affidavit dated 28.07.2020 showing proof that notice upon private respondent No. 4 has been served on 27.07.2020, was filed by Mr. S. Gunabanta, learned counsel for the petitioner and it is on record. Nevertheless, in order to ensure that respondent No. 4 has been properly served, Mr. Y. Nirmolchand, learned senior counsel appearing for the Imphal Municipal Corporation spoke to the Municipal Commissioner, Imphal Municipal Corporation and stated that respondent No. 4 will be once again informed to appear in the case tomorrow, if he is interested.*

At the request, list the matter again tomorrow (04.08.2020).
Till then, earlier interim order will be extended."

[5] Today, when the matter was taken up, Mr. Y. Nirmolchand, learned senior counsel appearing for the Imphal Municipal Corporation informed the Court that through Municipal Commissioner, information was given to respondent No. 4 about the case and to appear if he chooses to. However, no one appears for respondent No. 4 today also. From the above, it appears that respondent No. 4 is not inclined to enter appearance in this case despite dasti service by the petitioner and the information given by the Municipal Commissioner, Imphal Municipal Corporation as stated by Mr. Y. Nirmolchand, learned senior counsel appearing for the Imphal Municipal Corporation. It has to be understood that respondent No. 4 is not inclined to contest the matter.

[6] Even though respondent No. 4 did not show seriousness in contesting the matter, this Court took steps to ensure that respondent No. 4 is properly served or informed so as to avoid an allegation for violation of principles of natural justice, as it may lead such party to approach higher forum on the plea that no opportunity of hearing was given. In the present case, respondent No. 4 is served by the petitioner by dasti and proof affidavit has been filed. Besides, respondent No. 4 has been informed by the Municipal Commissioner, Imphal Municipal Corporation represented by Mr. Y. Nirmolchand, learned senior counsel as recorded above. Hence service is complete.

Therefore, this Court is of the view that no further step needs to be taken and there is no necessity to await appearance of respondent No. 4. Accordingly, the matter has to be taken up for hearing on merits.

[7] The primary plea submitted by Mr. HS Paonam, learned senior counsel appearing for the petitioner is that the toilet complex at Sareng Galli comes within the jurisdiction of Imphal Municipal Corporation. The petitioner society has been playing the pivotal role of keeping the Urban Section of the State neat and clean by providing Toilet, Latrine and Bathroom facilities to all who are in need at the populous Urban center since 2005. The voluntary service provided by the petitioner society has been satisfactorily appreciated from all section of the Society including the State Government. It has been stated that earlier till 2004, toilet complexes in the State was operated and maintained by M/S Sulabh International which was discontinued and the petitioner society was allowed to operate public toilet complex by an agreement dated 14.03.2005 (Annexure-A/1). The petitioner society has been running the same without any blemish. The old toilet complex located at Sareng Galli/Ngari Galli, Imphal was forcefully demolished by the respondents after terminating the agreement. Such action on the part of the official respondents, was challenged in W.P. (C) No. 418 of 2017 which was disposed of on 21.08.2018 directing the authority to consider the case of the petitioner when the new toilet complex is constructed and it is ready for public use. The new toilet complex at Sareng Galli/ Ngari Galli was completed in early part of 2019 but it has not been commissioned for one reason or other. The petitioner society approached the Director, MAHUD & Mayor, Imphal Municipal Corporation by representation dated 06.10.2018 and 13.12.2018 to consider the same for grant of licence to run the toilet complex to the petitioner association. Since the new toilet complex was not opened and allowed for public use, the petitioner filed W.P. (C) No. 139 of 2020 to direct

the official respondents to commission and open the new toilet complex at Sareng Galli/Ngari Galli and also to consider the petitoiner's claim. On 24.02.2020, W.P. (C) No. 139 of 2020 was disposed of directing the authorities to consider the representation of the petitioner within a timeline. Accordingly, representation was submitted by the petitioner on 07.03.2020 (Annexure-A/8) to consider the case of the petitioner for operation and maintenance of the toilet complex at Sareng Gali/Ngari Gali.

However, to the surprise of the petitioner, the Imphal Municipal Corporation issued the impugned order dated 23.05.2020 appointing respondent No. 4 in surreptitious manner and without giving the petitioner opportunity in terms of the order of the Court dated 24.02.2020 passed in W.P. (C) No. 139 of 2020. The authority has simply thrown the order of this court to the winds and arbitrarily appointed respondent No. 4 to operate and maintain the toilet complex. On earlier occasion, the petitioner's organization has been running it without any complaint. Therefore, to choose respondent No. 4 as against the petitioner was bad. This argument is repelled by Mr. Y. Nirmolchand, learned senior counsel appearing for the Imphal Municipal Corporation stating that the petitioner was found to be at fault in the earlier term. Therefore, it was not considered and in any event, the licence cannot be claimed as a matter of right.

[8] Be that as it may, on instruction, Mr. Y. Nirmolchand, learned senior counsel appearing for the Imphal Municipal Corporation fairly states that the Corporation gave it to respondent No. 4 due to urgency. He, however, fairly conceded that in matters of this nature, (i.e.) entrusting the work of maintenance of public toilet, a tendering process or public notice should have

been issued so that all intending and competent persons can participate. This he concedes, was not done. Mr. Y. Nirmolchand, learned senior counsel for the Imphal Municipal Corporation was very fair in stating that licence to maintain public toilet facilities should be granted in an open tender process and private negotiation should be avoided. The authority will follow the public tender process and rectify the error. The said statement is recorded. He stated that he has instruction to say so.

[9] In this case, there is no extenuating circumstance spelt out in the impugned order. There is no proof of tender issued or invoking urgency clause. Hence, the impugned order can be interdicted. It is trite law that the Imphal Municipal Corporation, while opening a new toilet complex should have considered grant of licence for its maintenance to all eligible persons. The earlier writ petition, namely, W.P. (C) No. 139 of 2020 to consider the representation have been ignored. Therefore, the authority is aware of the fact that there are other persons who are intending to offer their service. In such circumstances, it is incumbent on the part of the Municipal Commissioner, Imphal Muncipal Corporation to call for an open tender from eligible persons and choose the one who is eligible in all aspects for grant of licence. Having not done that, it was suggested by Mr. Y. Nirmolchand, learned senior counsel for the Imphal Municipal Corporation that the impugned order dated 23.05.2020 (Annexure-A/10) may be quashed and the authority should be allowed to proceed afresh.

[10] This plea of Mr. Y. Nirmolchand, learned senior counsel appearing for the Imphal Municipal Corporation is tenable in law. The officer who issued the impugned order is a senior officer and cannot feign ignorance

of the rules and procedures. It is nothing but an arbitrary proceeding. To state that the Court can set aside with liberty to proceed afresh is not the correct attitude. The Municipal Commissioner, Imphal Municipal Corporation has caused unnecessary litigation before this Court. This case could have been avoided if only he had taken up the tendering process and chosen the eligible person after giving opportunity to all intending bidders in a fair and open manner.

[11] In this view of the matter, taking note of above gross error in grant of licence to respondent No. 4 and the stand taken by Mr. Y. Nirmolchand, learned senior counsel appearing for the Imphal Municipal Corporation, the impugned order dated 23.05.2020 (Annexure-A/10) deserves to be set aside and it is set aside. The Municipal Commissioner, Imphal Municipal Corporation shall however, proceed for grant of licence to maintain the public toilet complex at Sareng Gali after following the public tender process as prescribed by rules. Till such time, the Imphal Municipal Corporation shall maintain the toilet complex by itself.

The writ petition stands allowed as above.

CHIEF JUSTICE

Sandeep

FR/NFR

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.08.05 11:02:43 +05'30'