Item No. 1

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.A. No. 43 of 2020
Ref.: W.P. (C) No. 627 of 2019

Shri Murphy Thumrah, aged about 53 years old, presently working as Special Class Contractor, S/o L. Daniel Thumrah, a resident of Lunghar Village, Ukhrul District, P.O. & P.S. Ukhrul, Manipur – 795142.

….*Appellant*

- Versus -

1. Shri Shreyo Hungyo @ Sheryyo Hungyo aged about 62 years old, S/o, (L) China Hungyo, Special Class Contractor, a resident of Bungba Village, Ukhrul District, Manipur, presently residing at Mantripukhri Marcy Land, P.O. Mantripukhri & P.S. Heingang, Imphal East District, Manipur – 795002.

….*Private Respondent*

2. The State of Manipur, represented by the Commissioner/Secretary/Principal Secretary (RD & PR), Govt. of Manipur, Old Secretariat Complex, Babupara, Imphal West District, Manipur – 795001.
3. The Chief Engineer, Rural Engineering Department (RED), Manipur State Rural Roads Development Agency (MSRRDA), Government of Manipur, 4th Floor Secure Office Complex, AT Line North AOC, Imphal, Manipur – 795001.
4. Shri Jesse Kamei, aged about 60 years, Special Class contractor and a resident of Neikanlong Thangmeiband, P.O. & P.S. Lamphel, Imphal West, Manipur – 795004.
5. A.S. Khathing, aged about 78 years, Special Class Contractor and a resident of Tushar Village, P.O. & P.S. Shangshak, Ukhrul District, Manipur – 795142.

…*Proforma Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE A. BIMOL SINGH

For the appellant	:	Mr. N. Jotendro, Senior Advocate
For the respondents	:	Mrs. Ayangleima, Advocate
Date of hearing & order	:	06.10.2020

O R D E R

[A.B., J]

[1] Heard Mr. N. Jotendro, learned Senior counsel appearing for the appellant and Mrs. Ayangleima, learned counsel appearing for the respondent No. 1 (writ petitioner).

[2] The present writ appeal is yet another litigation relating to disputes in tender process for awarding of contract works.

In the present case, the Chief Engineer, Rural Engineering Department (RED), Manipur State Rural Roads Development Agency (MSRRDA), Government of Manipur issued a notice inviting tender (NIT) dated 28.11.2018 for retender of 88 Works/83 Packages including Package No. MN09108 under Pradhan Mantri Gram Sadak Yojana (PMGSY) Phase – XI(Batch – II, 2017 – 18) from the eligible and approved contractors. Altogether 5 (five) eligible and approved contractors, including the appellant, respondents No. 1, 4 & 5 in the present writ appeal, submitted their bids for the aforesaid Package No. MN09108 and participated in the tender process. The technical bids were opened on 15.12.2018 and only 4 (four) bids viz. the

bids of appellant, respondents No. 1 (writ petitioner), 4 & 5 were found to be responsive and qualified for financial bids. The financial bids were opened on 06.02.2019 and the financial bid of respondent No. 4 herein was found to be first lowest bidder (L1) and the bids of the appellant, respondents No. 1 (writ petitioner) and 5 were jointly found to be second lowest (L2) as per the BOQ summary details and rate quoted by them.

[3] Before completion of the tender process and issuance of the work order, the respondent No. 1 (writ petitioner) came to know from the newspaper report that one, Shri Soram Dingding filed a Public Interest Litigation being PIL No. 13 of 2019 in this High Court alleging that certain documents submitted by the appellant and respondent No. 5 in support of their bids were fabricated and fake ones.

The respondent No. 1(writ petitioner) also came to know that the respondent No. 4 who was the lowest bidder (L1), had already withdrawn from the competition of tender by withdrawing the earnest money deposited in respect of the particular package mentioned herein above.

[4] On having knowledge of such subsequent developments, the respondent No. 1 (writ petitioner) filed the connected writ petition being W.P.(C) No. 627 of 2019 in this High Court praying for issuing a writ of mandamus or any other appropriate writ directing the Chief Engineer (RED) (respondent No. 3 herein) to cancel the bids of the appellant and respondent No. 5 and also to direct the respondent No. 3 to issue work order for the Package No. MN09108 in favour of the respondent No. 1(writ petitioner).

[5] During pendency of the aforesaid writ petition filed by the respondent No. 1 (writ petitioner), a meeting of tender committee was held on 19.08.2019. In the said meeting, the tender committee unanimously decided to reject the bids submitted by the 3 (three) bidders, who are alleged to be the appellant, respondents No. 4 & 5 in the present writ appeal, for all the packages, including the Package No. MN09108 under 3 NITs and to float those packages for retender.

[6] At the time of hearing of the connected writ petition, the counsel of the respondent No. 1 (writ petitioner) produced a copy of the said resolution of the tender committee before the learned Single Judge and prayed for disposing of the said writ petition by directing the Chief Engineer (RED) (respondent No. 3 herein), to issue the work order in favour of the petitioner on the ground that as the bids of the other 3 (three) bidders having been rejected by the tender committee, the bid of the respondent No. 1 (writ petitioner) remains valid and therefore, the respondent No. 1 (writ petitioner) is entitled to get the said contract work.

[7] The learned Single Judge after noticing that the validity and correctness of the resolution of the tender committee passed in its meeting held on 19.08.2019 having been not challenged by anybody and the said resolution of the tender committee having remained valid, declined to grant the prayer made by the counsel of the petitioner. However, in Para No. 7 of the impugned order dated 08.07.2020, the learned Single Judge disposed of the said writ petition by directing the writ petitioner to submit a representation within a week to the State Government and further directed

that in the event of such representation having been submitted by the petitioner therein, the State respondents namely, the State Government and Chief Engineer (RED) shall consider it and dispose of the same sympathetically in accordance with law within two weeks from the date of receipt of the said representation.

The learned Single Judge also made it clear that no fresh NIT shall be issued by the State respondents in respect of Package No. MN09108, L026 – Meiling to Ngaprum until disposal of the said representation, vide order dated 08.07.2020 passed by the learned Single Judge in W.P.(C) No. 627 of 2019. Para No. 7 of the impugned order reads as under :

> *"7. Accordingly, the instant writ petition stands disposed of with the direction that the petitioner shall submit a representation, within a week from today, to the respondent No. 1 and in the event of such representation being submitted by the petitioner, the State respondents, namely respondents No. 1 & 2 shall consider it and dispose of the same sympathetically, in accordance with law within 2 (two) weeks from the date of receipt of the representation. It is made clear that no fresh NIT shall be issued by the State respondents in respect of the package No. MN09108, LO26-Meiling to Ngaprum until the disposal of the said representation by them."*

[8] Having been aggrieved by the directions contained in Para No. 7 of the impugned order, the appellant preferred the present writ appeal assailing the same on the grounds, inter alia, that the direction is contrary to the judgment rendered by the Hon'ble Supreme Court of India in the case of "***Tamil Nadu Generation and Distribution Corporation Limited –Vs-CSEPDI TRISHE Consortium"*** reported in ***(2017) 4 SCC 318*** more particularly, Para No. 37 of the said judgment, which reads as under :

> *"37. Before parting with the case we are constrained to add something. We do so with immense pain. The respondent, before finalization of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ*

court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have exercised caution. If the courts would exercise power of judicial review in such a manner it is most likely to cause confusion and also bring jeopardy in public interest. An aggrieved party can approach the Court at the appropriate stage, not when the bids are being considered. We do not intend to specify. It is appreciable the owner in certain kind of tenders call the bidders for negotiations to show fairness transparently. But the present case is not one of such nature. Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court keeping in mind the established principle of restraint."

[9] In Para No. 37 of the judgment rendered in the case of "***Tamil Nadu Generation and Distribution Corporation Limited" (supra)***, the Hon'ble Apex Court explicitly deprecated the practice of submitting representations by the contractors during consideration of their bids and thereafter approaching the writ Courts, which gave directions for consideration of such representations. The Hon'ble Apex Court also cautioned the writ Courts to exercise restraint and not to exercise power of judicial review in such a manner as it is most likely to cause confusion and bring jeopardy in public interest. The Hon'ble Apex Court, in no unmistakable terms made it clear that an aggrieved party can approach the Court at the appropriate stage and not when the bids are being considered.

[10] After hearing the rival submissions made by the counsel of the contesting parties and after perusal of the relevant records and also after taking into consideration the principles laid down by the Hon'ble Apex Court in the case of ***"Tamil Nadu Generation and Distribution Corporation Limited" (supra)***, we are of the considered view that the directions given by the learned Single Judge in Para No. 7 of the impugned order may not be

appropriate tested on the above principles laid down by the Hon'ble Supreme Court, more so, when the learned Single Judge declined to grant the relief sought for by the writ petitioner. Further, the writ petitioner also did not choose to challenge the resolutions of the tender committee taken in its meeting held on 19.08.2019 for floating all the packages under the NIT by way of retender.

[11] In view of the above, we set aside the directions given by the learned Single Judge as contained in Para No. 7 of the impugned order. To that extent, the writ appeal is allowed.

Needless to mention here that the respondent No. 1 (writ petitioner) or for that matter, any aggrieved person is at liberty to challenge the resolutions taken by the tender committee in its meeting held on 19.08.2019, if so advised.

Parties are to bear their own cost.

JUDEGE **CHIEF JUSTICE**

FR/NFR

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Yumkham Rother

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