



GAHC010138552023

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

Case No. : WP(C)/3707/2023

SOMER ALI

S/O- HAJI SUKUR ALI, R/O- RAJMITAPANTHAR, GOALPARA, ASSAM, PIN-783129

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, P.H.E
DEPTT., DISPUR, GHY-06

2:THE CHIEF ENGINEER
(PHE)
WATER
ASSAM
HENGRABARI
GUWAHATI-36

3:THE MISSION DIRECTOR
JAL JIVAN MISSION (JJM)
ASSAM
HENGRABARI
GHY-36

4:THE EXECUTIVE ENGINEER
(PHE), DHUBRI DIVISION CUM DISTRICT MISSION DIRECTOR
JJM, DHUBRI
ASSAM

5:SRI MOKBUL HUSSAIN
CONTRACTOR (PHE)
OFFICE OF THE EXECUTIVE ENGINEER
PHE, DHUBRI DIVISION
DHUBRI, PIN



B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner: Shri M. H. Laskar, Advocate.

Advocates for respondents : Shri R. R. Gogoi, SC, PHE,
Shri S. Biswas, Advocate, R-5

Date(s) of hearing : 11.12.2023

Date of judgment : 11.12.2023

JUDGMENT & ORDER

Heard Shri M. H. Laskar, learned counsel for the petitioner. Also heard Shri R. R. Gogoi, learned Standing Counsel, PHE Department. Shri S. Biswas, learned counsel has appeared for the respondent no. 5.

2. Considering the facts and circumstances and also taking into account that pleadings are complete, the instant case is taken up for disposal at the admission stage itself.

3. The challenge in this writ petition is in connection with an order dated 07.06.2023 by which the Preliminary Work Order offered to the petitioner has been cancelled. However, before going to the issue, it would be beneficial if the basic facts of the case are narrated in brief.

4. The petitioner claims to be registered Class-I (C) Contractor under the PHE

Department. He had participated in a tender process in which his offer was found to be valid and accordingly issued a preliminary Work Order on 24.05.2023. The work in question was "Implementation of Kalachanpara new piped Water Supply Schemes of Dhubri Division under the programme Jal Jeevan Mission Assam". One of the condition of the Preliminary Work Order was that performance guarantee of 5% was to be submitted. It is the contention of the petitioner that such condition was fulfilled by submission of FDR on 05.06.2023 on which date, an agreement is also claimed to have been signed between the parties. However, even before the work could be started, the impugned order has been passed on 07.06.2023 cancelling the Preliminary Work Order.

5. Shri Laskar, the learned counsel for the petitioner has submitted that apart from the fact that the impugned order of cancellation does not contain any reasons, the reasons which were revealed during the preliminary hearing of this writ petition also appears to be incorrect. By referring to the order of this Court dated 26.06.2023, it is submitted that there was a reference to the FDR and on being *prima facie* satisfied regarding the deposit of such FDR, an order of stay was also granted by this Court. The learned counsel however submits that in the affidavit-in-opposition filed by the Department on 13.09.2023 two more grounds have been sought to be taken in support of the impugned action by the Department. He submits that the two grounds are in connection with the validity of the registration and SMT score.

6. By referring to the affidavit-in-reply filed by the petitioner on 18.11.2023, Shri Laskar, the learned counsel has submitted that apart from the fact that fresh grounds cannot be taken by means of an affidavit moreso when both the impugned order dated 07.06.2023 as well as the orders passed by this Court in the initial stages of this writ petition do not reflect any such grounds, even those grounds are not sustainable in law. It is submitted that so far as the registration of the petitioner is concerned, his

registration was valid up to 31.05.2023 and as per the stand of the Department itself, notice was issued for renewal of registration up to 31.07.2023 which was also extended by another month. It is submitted that well within time on 18.07.2023, the petitioner had submitted an application for renewal and for reasons best known to the Department such renewal has not been done. The petitioner was accordingly required to approach this Court by means of another writ petition i.e. WP(C) No. 5704/2023 which is pending disposal. As regards the other grounds of not meeting the SMT score as per a Standard Operating Procedure (SOP), the learned counsel by referring to the said SOP has submitted that there is an inbuilt mechanism itself regarding new contractor. As per the said Clause-E, for a new contractor, the annual turnover was to be taken into consideration *vis-à-vis* the value of the work in question. It is submitted that the annual turnover of the petitioner was Rs.199.96 lakhs and therefore in connection with the work in question, there was no lacking on the part of the petitioner to be eligible for allotment of such work. He submits that all these factors were taken into consideration before issuing the preliminary work order dated 24.05.2023 and therefore the impugned order of cancellation is not sustainable in law.

7. In support of his submission, Shri Laskar has relied upon the following cases:-

- i. ***AIR 1952 SC 16 (Commissioner of Police, Bombay Vs Gordhandas Bhanji)***
- ii. ***AIR 1978 SC 851 (Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors).***

8. The learned counsel for the petitioner accordingly submits that the law having laid down regarding the nature of the stand that can be taken while defending a case

by the Department, the fresh grounds cited in the affidavit are not liable to be taken into consideration.

9. *Per contra*, Shri Gogoi, the learned Standing Counsel for the Department has submitted that the provisional work order itself stipulates a Clause that the same can be cancelled without assigning any reasons thereof. The learned Standing Counsel otherwise submits that the reasons for which the cancellation has been made are stated in details in the affidavit and all the three reasons are relevant to the issue and should be taken into consideration while adjudicating the present dispute.

10. Shri Biswas, the learned counsel for the private respondent adopts the argument of the learned Standing Counsel of the Department and further submits that no fault can be attributed to his client as after the cancellation order, the work has been duly allotted to his client who fulfills all the eligibility criteria.

11. The rival submissions made have been duly considered and the materials placed before this Court have been carefully examined.

12. There is no dispute in the Bar regarding issuance of the preliminary Work Order dated 24.05.2023 which stipulates submission of performance guarantee of 5%. The materials placed on record including copy of the FDR would *prima facie* show that such condition was fulfilled by the petitioner. Though a ground has been taken that the FDR was not properly signed by the petitioner, such ground, even if assumed to be correct would only be curable in nature. As regards, the other two grounds which have been attempted to be taken in the affidavit-in-opposition filed by the Department on 13.09.2023, this Court is of the opinion that in view of the law laid down in the aforesaid cases of **Gordhandas Bhanji** (supra) and **Mohinder Singh Gill** (supra),

such grounds are not liable to be considered by this Court.

13. In paragraph 8 of ***Mohinder Singh Gill*** (supra) the following has been laid down:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

*Orders are not like old wine becoming better as they grow older.
A Caveat."*

14. Be that as it may, even for argument sake if the aforesaid two grounds are tested, both the grounds do not appear to have any basis. As regards the validity of the registration of the petitioner, there is no dispute that as on the date when he had participated in the tender process till the date of issuance of the Preliminary Work Order on 24.05.2023, the petitioner had a valid registration. The fact of application for renewal by the petitioner within the time stipulated is also not disputed. The further fact that the petitioner was required to file another writ petition i.e. WP(C) No. 5704/2023 on the issue of non-renewal of his registration would also be indicative of lack of *bona fide* on the part of the Department in treating the case of the petitioner.

15. So far as the issue of SMT score is concerned, a bare look on the SOP would indicate that Clause-E takes care of a situation of a new contractor and in the instant case, the records placed before this Court would show that in terms of the annual turnover, the petitioner meets requirement. In any case, the Preliminary Work Order being issued on 24.05.2023, the same indicates that all these factors were taken into consideration and the petitioner have fulfilled all the pre-conditions. The only aspect which can be deciphered from the Work Order is the requirement of submission of performance guarantee of 5% which also has been held in favour of the petitioner.

16. This Court is unable to accept the submission made on behalf of the Department that the Work Order can be cancelled without assigning any reasons thereof. It is trite law that all administrative actions are to be supported by reasons as it has been settled that reasons are the link to the objective which is sought to be fulfilled.

17. In view of the above, the instant writ petition stands allowed and the impugned cancellation order dated 07.06.2023 is set aside and quashed.

18. In view of the said conclusion arrived at by the Court, the stay order operating gets merged with this final order and the Department is accordingly directed to take necessary steps for completion of all the formalities of having the work done by the petitioner.

JUDGE

Comparing Assistant