

**THE HIGH COURT OF MEGHALAYA AT
SHILLONG**

: ORDER :

WRIT PETITION NO. 386 OF 2017

Shri Nanhelal Sah	::	Petitioner
Versus		
Food Corporation of India & Ors.	::	Respondents
Date of Order	::	22.01.2018

PRESENT

HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

Shri PT Sangma, for the petitioner.

Shri KS Kyning, Sr.Adv. with Shri BK Singh, for the respondents No. 1 to 6.

BY THE COURT: (ORAL)

Having heard learned counsel for the petitioner and having perused the material placed on record, this Court is unable to find any reason to entertain this writ petition.

The sum and substance of the matter is that the petitioner, who had been appointed as Transport Contractor for the respondent Food Corporation of India for carrying out the transportation work from Railway siding Barpeta Road/CWC Sorbhog to FSD Tura (NEFR) via Weighbridge for a period of two years under the work order dated 22.06.2016, has filed a title suit bearing No. 5 of 2017 in the Court of Assistant to the Deputy Commissioner, Tura for being aggrieved of the Notice Inviting Tender [NIT] issued by the respondents on 02.06.2017 for appointment of another contractor at his risk and cost. Along with the title suit, the petitioner also filed an application seeking temporary injunction under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure with the prayer that the respondents be restrained from appointing another contractor under the NIT in question. The learned Trial Court earlier granted an ad-interim injunction but ultimately

rejected the prayer for temporary injunction by its order dated 31.07.2017. Aggrieved, the petitioner preferred an appeal, being Misc. Civil Appeal No. 1 of 2017 that has been considered and dismissed by the learned Additional Deputy Commissioner (Judicial)/District Judge, Tura by the impugned order dated 14.12.2017. The learned Appellate Court, after having examined the record, has endorsed the findings of the Trial Court while observing as under:-

“15. It is seen from the record that there are continuous shortfalls in the supply of foodgrains by the Appellant who cannot meet the demands of the FCI for which the Respondents/FCI has no option but to invite another NIT during the subsistence of contract with the Appellant and even under Clause XI Sub-clause (c) the Respondent can invite Tender while another contractor is still there and has the right as per the MTF to appoint another contractor. The Ld. Trial Court has correctly observed that according to the said model tender form, there is a provision for summary termination of the contract where the General Manager can at his own discretion, without terminating the contract is at liberty to engage other labour/trucks etc at the risk and costs of the contractors who shall be liable to make good to the Corporation all additional charges, expenses, costs or losses that the Corporation may incur or suffer hereby. The Ld. Trial Court has further observed that it would be best and in the interest of the public to allow the Respondent/defendants to open the new tender without terminating the term of the appellant/plaintiff until his contract agreement ends since the Appellant/plaintiff alone cannot meet the demands of the Corporation and the same if not met would cause great shortage in the supply of foodgrains. Thus, it is seen that the Ld. Trial Court after taking into account the relevant facts has given its findings as per the settled principle of law while considering the grant of injunction. This Court therefore finds that there is no prima-facie case.

16. Based on the above noted facts, this Court is of the opinion that the Ld. Trial Court has rightly concluded that there is nothing in the pleadings to satisfy it that the Appellant will suffer irreparable injury and balance of convenience in his favour when the prima facie case is found wanting. In absence of Prima Facie case the balance of convenience and irreparable loss and injury need not be discussed anymore. Thus this Court finds that there is nothing to indicate that the Ld. Trial Court has exercised its discretion arbitrarily, or capriciously or perversely or ignored the settled principles of law regulating grant or refusal of interlocutory order for injunction. The Appellate Court can always look into whatever evidence is available on record to determine a case.”

The observations foregoing appear to be in accord with the principles of law governing the case and the order impugned does not appear suffering from any jurisdictional error so as to call for interference in the writ jurisdiction.

Learned counsel for the petitioner endeavoured to submit that even if the respondents appoint another/additional contractor for the work in question, the same may not be at his risk and cost because he had been working for about one and a half year and thereby, a substantial part of the term of his contract is already over. This Court would not be making any comment as regards this submission because the title suit filed by the petitioner is pending before the Trial Court. The petitioner is otherwise free to take steps for adjudication of all other issues that exist or may arise between the parties as regards this contract matter. The considerations herein are confined only to the question as to whether the petitioner is entitled for a temporary injunction in the matter; and in this regard, as observed hereinabove, the subordinate Courts have proceeded on relevant considerations and on the applicable principles. Hence, there is no case for interference.

Accordingly and with the observations foregoing, this petition stands dismissed summarily.

CHIEF JUSTICE