

GAHC010060082018



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

Case No. : WP(C) 1861/2018

1:M/S UMESH PRASAD RAI GROCERY
REP. BY ITS PROP. SRI UMESH PRASAD RAI, S/O- LATE CHANCHAL RAI,
R/O- MB ROAD, WARD NO.4, MORIGAON TOWN, P.O- MORIGAON, DIST-
MORIGAON, ASSAM- 782105

VERSUS

1:THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
HEALTH AND FAMILY WELFARE DEPTT, DISPUR, GUWAHATI- 781006

2:THE DIRECTOR
HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781006

3:THE TECHNICAL COMMITTEE FOR EVALUATION OF TECHNICAL BIDS
FOR PROVIDING PATIENT DIET ARTICLES FOR DISTRICT HEALTH
INSTITUTIONS
REP. BY ITS MEMBER SECRETARY
HENGRABARI
GUWAHATI- 36

4:PRADIP DAS
PROP OF DAS ENTERPRISES
S/O- LATE MATHURA MOHAN DAS
R/O- WARD NO. 2
PATHSALA TOWN
P.O- PATHSALA
DIST- BARPETA
ASSAM

PIN- 781328

5:SUJIT KUMAR GHOSH
DIET CONTRACTOR
B BARUAH ROAD
P.O AND P.S- HOJAI
DIST- HOJAI
ASSAM
PIN- 78243

Advocate for the Petitioner : MR. D K DAS

Advocate for the Respondent : SC, HEALTH, B GOGOI

**BEFORE
HONOURABLE MR. JUSTICE ARUP KUMAR GOSWAMI**

ORDER

Date : 29-03-2018

Heard Mr. K. Singha, learned counsel for the petitioner. Also heard Mr. D.P. Bora, learned standing counsel, Health and Family Welfare Department appearing for the respondent Nos. 1, 2 and 3.

By this petition filed under Article 226 of the Constitution of India, the petitioner prays for a direction to the respondent Nos. 1, 2 and 3 to cancel the technical bid of the respondent Nos. 4 and 5 submitted in response to e-tender notice dated 26.9.2017 and to cancel the work order, if any, issued in their favour and to issue work order in favour of the petitioner. A further prayer for setting aside the summary tender report dated 11.11.2017 so far as it relates to the respondent Nos. 4 and 5 is also made.

The petitioner had earlier approached this Court by filing an application under Article 226 of the Constitution of India registered as WP(C) No.773/2018. The said writ petition was dismissed on withdrawal by the following order dated 16.2.2018:

“On the prayer of Mr. A. Paul, learned counsel for the petitioner, this writ petition is allowed to be withdrawn.

I have also heard Ms M. Bhattacharjee, learned Additional Senior Government

Advocate, Assam.

The writ petition stands dismissed on withdrawal.”

Mr. Sinha has made available copy of the writ petition filed in WP(C) 773/2018 for perusal of the Court.

In the said writ petition, the petitioner prayed for a declaration of the bids of the respondent Nos. 4 and 5 as evaluated by the evaluation committee as illegal and ultra virus and to float fresh tender or to re-evaluate the technical bids again.

Essentially and fundamentally, the prayers made in both the writ petitions are same as the core challenge is regarding acceptance of technical bids of the respondent Nos. 4 and 5. Order 23 Rule 1 CPC, which is on the subject of withdrawal and adjustment of suit, reads as under:

“1. Withdrawal of suit or abandonment of part of claim— (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject- matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

A perusal of the above provision goes to show that a court, if satisfied, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute fresh suit in respect of the subject matter of such suit or such part of the claim and when the plaintiff abandons any suit or such part of the claim under sub-rule 1 or withdraws from a suit or part of the claim without permission referred to under sub-rule 3, he shall be precluded from instituting any fresh suit in respect of such subject matter or such part of claim.

In *Sarguja Transport Services vs. State Transport Appellate Tribunal and ors.*, reported in (1987) 1 SCC 5, the Supreme Court was considering as to whether a petitioner after withdrawal of the writ petition filed by him in the High Court under Article 226 of the Constitution of India, without the permission to institute a fresh petition, can file a fresh petition under Article 226 of the Constitution of India.

The Supreme Court held that the principles underlying Rule 1 of Order 23 CPC should be extended to in the interest of administration of justice to cases of withdrawal of writ petitions also, not on the ground of res-judicata but on the ground of public policy as it would discourage the litigant in indulging in Bench-hunting tactics. It was also observed that though withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or petition under Article 32 of the Constitution of India as such withdrawal does not amount to res-judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned in respect of the cause of action relied on in the petition when he withdraws it without such permission. The question, however, as to whether the same principle would apply in a writ petition involving personal liberty of an individual was left open.

In view of the above law laid down by the Supreme Court, as this petition does not relate to personal liberty, I am of the opinion that this petition cannot be entertained and hence, the same is dismissed.

JUDGE

Comparing Assistant