

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.608 of 2018**

Sri Samir Ghosh,
son of late Surendra Chandra Ghosh,
a resident of Shibnagar, Near Ramthakur Ashram,
Udichi Road, P.O. Agartala College,
P.S. East Agartala, District : West Tripura

.....Petitioner(s)

Versus

1. The State of Tripura,
represented by the Secretary
to the Government of Tripura,
Public Works Department, Civil Secretariat,
P.O. Agartala Secretariat, Agartala, West Tripura

2. The Chief Engineer,
Water Resource Department (PWD),
Malancha Nibash, P.O. Kunjaban, Agartala,
West Tripura, PIN : 799006

3. The Superintending Engineer,
Water Resource, Circle-I,
Malancha Nibash,
P.O. Kunjaban Agartala,
West Tripura, PIN : 799006

4. The Executive Engineer,
Resource Division, Panchamukh,
P.O. ONGC, Agartala, West Tripura

5. Suman Enterprise,
Melarmath, Near State Bank of India,
HGB Road, P.O. Agartala,
District : West Tripura
represented by his partner,
Sri Umesh Rudra Paul

.....Respondent(s)

For Petitioner(s) : Mr. S.M. Chakraborty, Sr. Adv.

For Respondent(s) : Mr. D. Bhattacharya, G.A.

Mr. T.D. Majumder, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

20/12/2019

Heard Mr. S.M. Chakraborty, learned senior counsel
appearing for the petitioner as well as Mr. D. Bhattacharya, learned

G.A. appearing for the respondents No.1 to 4 and Mr. T.D. Majumder, learned counsel appearing for the respondent No.5.

2. By means of this writ petition, the petitioner who is a contractor has urged this court to direct the respondents to award all the three works to the petitioner as reflected in the Notice Inviting Tender (NIT) dated 26.12.2017 [Annexure-4 to the writ petition] being the lowest tenderer for all the items as mentioned in the NIT. The petitioner has also urged for interim protection by restraining the respondent No.5 to execute the said work. On 21.06.2018, at the time of issuing notice on motion, the following ad-interim order was passed :

"In the meanwhile, the respondents may go ahead with the formalities but shall not finalize the impugned tender process without prior permission of the court, if not finalized so far."

3. The work orders were issued separately on 06.06.2018 by the Executive Engineer, Resource Division, Panchamukh, Agartala, Tripura under No.F.EE/RD/TECH/57/350-359. By the work orders dated 06.06.2018, the following works were directed to be executed by the respondent No.5 :

Item No.1 :

Collection of Pea-gravers of size range 2.00 MM to 4.75 MM from quarries of Durgapur at West Bengal of specification conforming to IS:4097-1967 (Grade-A & Grade-B) stacking and supplying at Panchamukh store yard, Resource Sub-Division, Agartala including thoroughly washing, cleaning and screening, loading unloading etc. complete as per direction and satisfaction of the Engineer-in-Charge for 300 Cum.

Item No.2 :

Collection of Pea-gravers of size range 2.00 MM to 4.75 MM from quarries of Durgapur at West Bengal of specification conforming to IS:4097-1967 (Grade-A & Grade-B) stacking and supplying at Panchamukh store yard, Resource Sub-Division, Agartala including thoroughly washing, cleaning and screening, loading unloading etc. complete as per direction and satisfaction of the Engineer-in-Charge for 350 Cum.

Item No.3 :

Collection of Pea-gravers of size range 2.00 MM to 4.75 MM from quarries of Durgapur at West Bengal of specification conforming to IS:4097-1967 (Grade-A & Grade-B) stacking

and supplying at Panchamukh store yard, Resource Sub-Division, Agartala including thoroughly washing, cleaning and screening, loading unloading etc. complete as per direction and satisfaction of the Engineer-in-Charge for 350 Cum.”

4. The petitioner’s grievance is that he was the lowest bidder so far the rate is concerned but if his bid was not considered by the respondent No.3 on the plea that at the relevant point of time, the petitioner had no enlistment and as such, considering him not to be an enlisted contractor, he was not favoured with the work order.

5. Mr. S.M. Chakraborty, learned senior counsel appearing for the petitioner has submitted that the enlistment was revalidated by the notification dated 30.12.2017 [Annexure-2 to the writ petition]. In the process of validation, the notification dated 30.12.2017 [Annexure-2 to the writ petition] was issued wherefrom this court has gathered that on 08.06.2016 the enlistment of the contractor under PWD had expired. The validation was made on 14.03.2018. From the notice inviting tender No.07/EE/RD/2017-2018 dated 26.12.2017, it is apparent that the last date of filing the tender was 15.01.2018 at 3.30 p.m.

6. Mr. Chakraborty, learned senior counsel has submitted that the tender was decided much later, precisely on 06.06.2018. The work was decided in favour of the respondent No.5. Mr. Chakraborty, learned senior counsel has submitted that when the tender of the petitioner was declared informal not having the enlistment, the matter for revalidation was taken up with the superior authority [the Chief Engineer, PWD Agartala]. The Chief Engineer opined as follows:

“The tender value of the work is within delegation of financial power limit of the SE. So, the tender may be sent to the SE, WRC-I, Agartala with an instruction to accept the tender of Sri Samir Ghosh after justification of his quoted rate.”

7. Despite that opinion of the Chief Engineer, the respondent No.3 refused to consider the bid of the petitioner treating his tender as

informal. Therefore, the solitary question that falls for consideration in order to determine this controversy is that whether on the last day of submitting the tender, could the petitioner be treated as the enlisted contractor, inasmuch as, the bids were asked from the enlisted contractors only. The respondents No.1 to 4 by filing the reply has categorically asserted as follows :

"I submit that enlistment of the petitioner was ceased to exist on or after 30.06.2016. It is admitted by the petitioner that his validity expired on 30.06.2016 by operation of Notification dated 08.06.2016. He could have applied for revalidation on or before 30.03.2016 and in that event he could have taken the plea that revalidation process was continuing and he had applied during validity of his enlistment. Therefore, the concept of renewal process does not stand or suit to the fact and circumstances of the present case."

The respondent No.3 placed the representation along with all the tenders to the respondent No.2 for his views on declaration of tenders of the petitioner as informal on the ground of expiry of enlistment of the petitioner at the time of tendering process. The respondent No.2 has returned the tenders to the respondent No.3 with a file note dated 14.05.2018 recommending the tenders of the petitioner as formal, indicating that the validity of the enlistment of the petitioner which issued on 05.06.1993 is effective subject to renewal.

8. It has been further asserted by the respondents No.3 to 5 that the petitioner did not apply for revalidation of his enlistment and submitted his tender with the enlistment issued on 05.05.1993. Subsequently, the petitioner had submitted the enlistment valid till 30.04.2016 whereas the last date of submitting the tender was on 15.01.2018 at 3 p.m. It had been understood by the department that the validity of enlistment of the petitioner expired before the last date of receiving the tenders and hence, the tenders of the petitioner have been treated informal.

9. At this juncture, Mr. S.M. Chakraborty, learned senior counsel has raised an issue that whether an opinion of the superior can be brushed aside by its subordinate officer in the hierarchy. It has been seen from the note given by the Chief Engineer that in terms of the Delegation of Financial Power Rules, 1994, as amended, the Superintendent Engineer had the authority to settle the tender.

10. Mr. T.D. Majumder, learned counsel appearing for the respondent No.5 has submitted that as per Clause-7 of PWD Works Manual, the enlistment remains valid for a period of 5(five) years from the date of issue. The enlistment can, however, be revalidated in accordance with rules in this regard. Each revalidation shall be for a period of five years from the date of expiry of the previous enlistment/revalidation. The enlistment shall however remain open to be reviewed by the enlistment authority and is liable to termination, suspension or any other such action at any time if considered necessary by the enlistment authority, after issue of show cause notice returnable by 15 days time. The later part of this provision is not relevant in the present controversy but it has been definitely postulated that the enlistment shall ordinarily remain valid for five years and within that time or within the time as notified, if the application for revalidation is issued, in that case, by deeming fiction it can be held that the validation continued uninterrupted.

11. But in the present case, the petitioner did not apply within the prescribed time as set up by the notification issued by the respondents nor did he apply prior to the expiry of the enlistment. Therefore, on the relevant day of 15.01.2018 he had no enlistment at all. In such circumstance, the impugned work orders dated 06.06.2018 were issued for the work as cited above. Even, the respondents No.1 to

4 in their reply did not contest the position taken by the petitioner that his rate was the lowest but they have consistently stated that on the relevant day of opening i.e. 15.01.2018, by no stretch of interpretation or by applying the cannon of law it can be stated that the petitioner had valid enlistment on that day. Therefore, the petitioner was supposed to be declared informal and he was so declared. The note of the Chief Engineer should be ignored in the present context inasmuch as when the cutoff date had expired, the petitioner was not in a position to claim that he was eligible to participate in the tender. Accordingly, there is no infirmity in the decision of the tendering authority, the respondent No.3.

12. Having observed thus, this court does not find any merit in this petition. That apart, Mr. T.D. Majumder, learned counsel appearing for the respondent No.5 has submitted that since the work order was issued on 06.06.2018 and the said interim order passed by this court on 21.06.2018 that did not create an embargo from executing the work. In the course of time the work is completed.

Having observed thus, this writ petition stands dismissed.

However, in the circumstances, there shall be no order as to costs.

JUDGE