

GAHC010019792017



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

Case No. : WP(C) 2270/2017

1:EAST INDIA SUPPLY CENTRE
SRCB ROAD, FANCY BAZAR, GUWAHATI-1, REPRESENTED BY ITS
PARTNER MR. MRINAL GANERIWAL, S/O LATE RAVINDRA KUMAR
GANERIWAL, R/O-SRCB ROAD, FANCY BAZAR, GUWAHATI-1

VERSUS

1:THE STATE OF ASSAM and 3 ORS.
REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE GOVT.
OF ASSAM, HANDLOOM and TEXTILE and SERICULTURE DEPTT., DISPUR,
GUWAHATI-781006

2:THE COMMISSIONER TO THE GOVT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DIRECTOR
HANDLOOM and TEXTILES
ASSAM
AMBARI
GUWAHATI-781001

4:THE ASSAM GOVT. MARKETING CORPORATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR
AMBARI
GUWAHATI-

Advocate for the Petitioner : MR.D THAOSEN

Advocate for the Respondent : MR.R SALOIR-4

Linked Case : WP(C) 6781/2017

1:M/S KAMENG ENGINEERING
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT MAKUM ROAD
TOKRIGOLA
TINSUKIA
ASSAM
REP. BY ITS AUTHORISED ATTORNEY SRI SANDEEP GARODIA.

VERSUS

1:THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HANDLOOM AND TEXTILES AND SERICULTURE DEPARTMENT
DISPUR
GUWAHATI -6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILES ND SERICULTURE DEPARTMENT
DISPUR
GUWAHATI -6.

3:THE FINANCE EC-II DEPARTMENT
REP. BY THE COMMISISONER AND SECRETARY
GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

4:THE DIRECTORATE
HANDLOOM AND TEXTILES
ASSAM
GNB ROAD
AMBARI
GUWAHATI- 781001.

5:THE DIRECTOR OF HANDLOOM AND TEXTILES
GNB ROAD
AMBARI
GUWAHATI - 781001.

6:THE ASSAM GOVT. MARKETING CORPORATION LTD.
REP. BY ITS MANAGING DIRECTOR
AMBARI

GUWAHATI - 781001.

7:THE ASSISTANT DIRECTOR OF HANDLOOM and TEXTILES
SIVASAGAR

8:THE ASSISTANT DIRECTOR OF HANDLOOM and TEXTILES
SADIYA

9:THE ASSISTANT DIRECTOR OF HANDLOOM and TEXTILES
JORHAT

10:SUPERINTENDENT OF HANDLOOM AND TEXTILES
CHARAIDEO.

Advocate for the Petitioner : MR.K MOHAMMED
Advocate for the Respondent : GA
ASSAM

Linked Case : WP(C) 6780/2017

1:M/S TRIBENI ENTERPRISE
A PROPRIETORSHIP FIRM
HAVING ITS REGISTERED OFFICE AT G.T.B. ROAD
P.O. and DIST. DHUBRI
ASSAM
REP. BY ITS PROPRIETOR SRI GOPAL CH. SAHA.

VERSUS

1:THE STATE OF ASSAM AND 10 ORS
REP BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILES AND SERICULTURE DEPARTMENT
DISPUR GUWAHATI-06.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILES AND SERICULTURE DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE FINANCE EC-II DEPARTMEN
T
REP. BY THE COMMISSIONER AND SECRETARY

GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

4:THE DIRECTORATE
HANDLOOM AND TEXTILES
ASSAM
G.N.B. ROAD
AMBARI
GUWAHATI - 781001.

5:THE DIRECTOR OF HANDLOOM AND TEXTILES
ASSAM
G.N.B. ROAD
AMBARI
GUWAHATI - 781001.

6:THE ASSAM GOVT. MARKETING CORPORATION LTD.
REP. BY ITS MANAGING DIRECTOR
AMBARI
GUWAHATI- 781001.

7:THE ASSISTANT DIRECTOR OF HANDLOOM and TEXTILES
NAGAON

8:SUPERINTENDENT OF HANDLOOM and TEXTILES
HOJAI

9:SUPERINTENDENT OF HANDLOOM and TEXTILES
MORIGAON

10:SUPERINTENDENT OF HANDLOOM and TEXTILES
CHARAIDEO

11:SUPERINTENDENT OF HANDLOOM and TEXTILES
MAJULI

Advocate for the Petitioner : MR.H NATH
Advocate for the Respondent : MR.S CHANDA R-6

Linked Case : WP(C) 7492/2017

1:M/S. KAUSTABH GOGOI
REPRESENTED BY ITS PROPEITOR MR. KAUSTABH GOGOI
S/O. SRI DINU GOGOI
R/O. DHARAMNALA

DIPHU
KARBI ANGLONG
ASSAM.

VERSUS

1:THE STATE OF ASSAM and 3 ORS.
REPRESENTED BY THE COMMISSIONER and SECRETARY TO GOVT. OF
ASSAM
HANDLOOM
TEXTILE and SERICULTURE DEPTT.
DISPUR
GUWAHATI-781006.

2:THE COMMISSIONER TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR
HANDLOOM and TEXTILES
ASSAM
AMBARI
GUWAHATI-781001.

4:THE ASSAM GOVT. MARKETING CORPORATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR
AMBARI
GUWAHATI-1.

Advocate for the Petitioner : MS.J RONGPIPI
Advocate for the Respondent :

Linked Case : WP(C) 4493/2017

1:M/S. S.S. ENTERPRISE
REPRESENTED BY ITS PROPRIETOR- SRI SARAT SING DEORI
S/O. LT. KANESWAR DEORI
NEAR DIRECTORATE OF GEOLOGY AND MINING
ASSAM
DAKHINGAON
KAHILIPARA
GUWAHATI- 781019
DIST. KAMRUPM
ASSAM.

VERSUS

1:THE STATE OF ASSAM and 4 ORS.
REP. BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILES and SERICURLTURE DEPTT.
DISPUR
GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILES and SERICURLTURE DEPTT.
DISPUR
GUWAHATI-6.

3:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-6.

4:THE DIRECTOR OF HANDLOOM and TEXTILES
ASSAM
GUWAHATI-1.

5:THE MANAGING DIRECTOR
ASSAM GOVT. MARKETING CORPORATION LTD.
AMBARI
GUWAHATI-1.

Advocate for the Petitioner : MR.K KALITA
Advocate for the Respondent : SC
FINANCE

Linked Case : WP(C) 7512/2017

1:M/S. KIRAN REED INDUSTRIES
REPRESENTED BY ITS PROPEITOR MR. HRIDAY NATH SHARMA
S/O. LT. MEWA LAL SHARMA
P.S. FATASHIL AMBARI
GUWAHATI
ASSAM.

VERSUS

1:THE STATE OF ASSAM and 3 ORS.
REPRESENTED BY THE COMMISSIONER and SECRETARY TO GOVT. OF
ASSAM
HANDLOOM
TEXTILE and SERICULTURE DEPTT.
DISPUR
GUWAHATI-781006.

2:THE COMMISSIONER TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR
HANDLOOM and TEXTILE
ASSAM
AMBARI
GUWAHATI-781001.

4:THE ASSAM GOVT. MARKETING CORPORATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR
AMBARI
GUWAHATI-1.

Advocate for the Petitioner : MS.R DEKA
Advocate for the Respondent :

Linked Case : WP(C) 6778/2017

1:M/S JHURIA READYMADE CENTRE
A PROPRIETORSHIP FIRM
HAVING ITS REGISTERED OFFICE AT SHIV MARKET
FANCYBAZAR
GUWAHATI - 781001
ASSAM
REP. BY ITS PROPRIETOR SRI MAHESH KUMAR JHURIA.

VERSUS

1:THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSONER AND SECRETARY TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILES AND SERICULTURE DEPARTMENT
DISPUR

GUWAHATI-06.

2:THE COMMISSIONER and SECRETARY
TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILES AND SERICULTURE DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE FINANCE EC-II DEPARTMENT
REP. BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

4:THE DIRECTOR
HANDLOOM AND TEXTILES
ASSAM
GN.B. ROAD
AMBARI
GUWAHATI- 781001.

5:THE DIRECTOR OF HANDLOOM AND TEXTILES
ASSAM
G.N.B. ROAD
AMBARI
GUWAHATI - 781001.

6:THE ASSAM GOVT. MARKETING CORPORAITON LTD.
REP. BY ITS MANAGING DIRECTOR
AMBARI
GUWAHATI- 781001.

7:THE ASSISTANT DIRECTOR OF HANDLOOM and TEXTILES
SIVASAGAR

Advocate for the Petitioner : MR. R SENSUA
Advocate for the Respondent : GA
ASSAM

Linked Case : WP(C) 7518/2017

1:M/S. SUMIT ENTERPRISE
REP. BY ITS PROPRIETOR MR. SUMIT KR. MALOO
S/O. BAJRANG LAL MALOO
R/O. FANCY BAZAR

GUWAHATI
ASSAM.

VERSUS

1:THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HANDLOOM
TEXTILE and SERICULTURE DEPTT.
DISPUR
GHY.-781006.

2:THE COMMISSIONER
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY.-781006.

3:THE DIRECTOR
HANDLOOM and TEXTILES
ASSAM
AMBARI
GHY.-781001.

4:THE ASSAM GOVT. MARKETING CORPN. LTD.
REP. BY ITS MANAGING DIRECTOR
AMBARI
GHY.-01.

Advocate for the Petitioner : MR.D THOUSAN
Advocate for the Respondent : SC
FINANCE

**BEFORE
HONOURABLE MR. JUSTICE UJJAL BHUYAN**

JUDGMENT & ORDER (CAV)

DATE OF HEARING : 03.12.2018

DATE OF JUDGMENT : 28.06.2019

Heard Mr. D. Das and Mr. B. D. Das, learned Sr. Counsel assisted by Ms. R. Deka and Mr. H. Nath, learned counsel for the petitioners and Mr. D. Saikia, learned Sr. Addl. Advocate General, Assam assisted by Mr. B. Gogoi, learned Standing Counsel, Finance Department. Also heard Ms. M. Bhattacharjee, learned Government Advocate, Assam and Mr. S. Chamaria, learned counsel for Assam Government Marketing Corporation Ltd.

2. Though WP(C) Nos. 2610, 2270, 2611, 4493, 6467, 6475, 6478, 6778, 6780, 6781, 6800, 7492, 7512 and 7518 of 2017 were heard together, for the sake of convenience the cases are divided into two groups and the group comprising WP(C) Nos. 2270, 4493, 6778, 6780, 6781, 7492, 7512 and 7518 of 2017 are taken up together and disposed of by this common judgment and order.

3. Matter relates to claim of the petitioners for release of their respective bill amounts against supply of various quantities of yarn under the Chief Minister's Special Programme for the year 2015-16.

4. For better appreciation, individual facts of each case may be briefly highlighted. However, for the sake of convenience, WP(C) No. 7492/2017 is taken up as the lead case.

WP(C) No. 7492/2017

5. Petitioner in this case is M/s Kaustabh Gogoi, a proprietorship firm. Respondent No.

3 i.e., Director of Handloom and Textiles, Assam had issued e-tender notice dated 07.12.2015 for supply of 2/60s mercerized bleached cotton hank yarn and 2/60s mercerized dyed cotton hank yarn (colour fast to sunlight and washing) from registered manufacturers or authorized dealer for procurement under the Chief Minister's Special Programme for the year 2015-16. E-tender notice mentioned schedule of the tender and that rate should be quoted group-wise covering the districts as under:-

Group	Districts
A.	Tinsukia, Dibrugarh, Sivasagar and Golaghat
B.	Jorhat, Nagaon and Morigaon.
C.	Dhemaji, Lakhimpur, Sonitpur, Darrang and Udalguri.
D.	Kamrup, Kamrup (M), Nalbari and Barpeta.
E.	Bongaigaon, Dhubri, Goalpara, Kokrajhar, Chirang and Baksa.
F.	Cachar, Hailakandi, Karimganj, Dima Hasao and Karbi Anglong.

6. A meeting of the tender committee for evaluation of technical bids for procurement of yarn was held on 28.12.2015. It was found that only two bidders had submitted technical bids online, being-

1. M/s Mafatlal Industries Ltd., Andheri (East), Mumbai.
2. M/s Trade Supply (India), AT Road, Guwahati.

M/s Mafatlal Industries had submitted bids for four groups i.e. groups C, D, E, and F alongwith hardcopies of tender documents and samples of yarn. M/s Trade Supply (India) had submitted bid for one group only i.e. group A. No bid was received for group B. On scrutiny of tender papers, bids of the two bidders were found to be technically valid. However, since no tender was received for group B, tender committee decided to send the minutes of the meeting to the Government for necessary suggestions/instructions.

7. It is not known what happened thereafter.

8. However, tender committee in its meeting held on 29.12.2015 for evaluation of price bid found that M/s Trade Supply (India) had quoted Rs.655.00 and Rs.775.00 respectively for the two varieties of yarn in group A. On the other hand, M/s Mafatlal Industries Ltd. quoted Rs.473.00 and Rs.572.00 for group C; Rs. 464.00 and Rs.563.00 for group D; Rs. 473.00 and Rs.572.00 for group E; and Rs. 473.00 and Rs. 572.00 for group F. Tender committee decided to approve the rates quoted by M/s Mafatlal Industries Ltd. for groups C, D, E and F. For group A, it was decided that negotiation would be done with the bidder to bring the rate at par with the other four groups. It was further decided that for group B rate offered by M/s Mafatlal Industries Ltd. may be accepted and offered to interested parties.

9. To the best of petitioner's knowledge, the tenderer for group A, i.e. M/s Trade Supply (India) did not accept the decision of the tender committee for negotiation to supply the materials at the rate at par with the other groups.

10. Assam Government Marketing Corporation Ltd. (AGMC) floated notice inviting quotation and expression of interest on 08.01.2016 inviting quotations from firms/dealers at the rate mentioned therein under the Chief Minister's Special Programme for the year 2015-16, the two rates being Rs.473.00 and Rs. 572.00.

11. Interestingly, much after 08.01.2016 when the notice inviting quotation and expression of interest was floated by AGMC on 08.01.2016, Director of Handloom and Textiles, Assam placed order dated 20.01.2016 with the AGMC for supply of various quantities of cotton yarn as per rate mentioned therein. The particulars of supply orders are as under:-

Sl. No.	Group	Specification	Quantity	Rate per kg.	
1.	Group A	2/60s mercerized bleached cotton hank yarn	196842.00 kg.	@ 473/- per kg.	12.
		2/60s mercerized dyed cotton hank yarn (colour fast to sunlight and washing) in hank form.	65614.00 kg.	@572/- per kg.	It appears that an agreement was entered into between
2.	Group B	2/60s mercerized bleached cotton yarn	179097.00 kg.	@473/- per kg.	
		2/60s mercerized dyed cotton hank yarn (colour fast to sunlight and washing) in hank form	59699.00 kg.	@572/- per kg.	

Government of Assam represented by the Director of Handloom and Textiles on the one part and Manager of AGMC of the other part on 20.01.2016 for supply of yarn.

13. On the next day, AGMC issued supply order dated 21.01.2016 to the petitioner for supplying 10025 packets of yarn of the two varieties for group A. On that day itself i.e. on 21.01.2016, an agreement was entered into between AGMC and the petitioner for making such supply.

14. Petitioner has stated that on receipt of the supply order it had supplied the requisite quantities of cotton yarn on 19.02.2016 whereafter it raised bill on 25.05.2016 for an amount of Rs. 99,79,887.00. However, bill amount has not been paid.

15. Representation submitted on 12.06.2017 has failed to yield any result.

15.1. Hence the writ petition.

16. AGMC in its affidavit has admitted that supply order dated 21.01.2016 was issued by AGMC to the petitioner for supply of yarn. It is also admitted that petitioner had supplied the material and thereafter submitted bill. AGMC had written to the Director of Handloom and Textiles, Assam on 14.12.2017 for release of fund which was forwarded by the Director to

the Govt. of Assam in the Handloom, Textiles and Sericulture Department on 09.01.2018. But till date fund has not been received. Due to non-release of required fund by the Government, AGMC could not make the payment to the petitioner. Reference has been made to the supply order to contend that it was mentioned therein that payment would be made only after receipt of fund.

17. Director of Handloom and Textiles, Assam in his affidavit has stated that in so far claim of the petitioner is concerned, it is a matter between petitioner and AGMC. However, it is stated that Directorate was taking all steps for making payment to the supplier i.e. AGMC against supplied materials.

18. Commissioner and Secretary to the Govt. of Assam, Finance Department in his affidavit filed through the Under Secretary has taken the stand that supply order was issued to M/s Mafatlal Industries Ltd. for groups C, D, E and F as it was the only bidder in those groups. It is stated that this course of action was not proper and there being only single bid the tendering authority should have gone for re-tender in conformity with established financial procedures, CVC guidelines for public procurement and statutory provisions under the **Assam Financial Rules and Business Management Act, 2005** (AFRBM Act). It is contended that this procedure of finalizing tender process when there was a single tender was violative of Finance Department's office memorandum dated 11.08.2010. It is further stated that in case of group A also there was only one tenderer namely, M/s Trade Supply (India) which subsequently withdrew from the tender process. However, instead for going for re-tender supply order dated 20.01.2016 was issued to AGMC which was not even a tenderer. In respect of group B there was no tenderer. However, tender committee offered supply order to AGMC at the rates offered by M/s Mafatlal Industries Ltd. in the other groups though AGMC was not even a participant in the tender process. AGMC on its part vide order dated 21.01.2016 sub-let the supply order in favour of the petitioner which was in gross violation of tender conditions prohibiting sub-letting of the contract. It is contended that supply order was issued to the petitioner by the AGMC only and not by the Government. Therefore, petitioner cannot have any claim against the Government. Vigilance enquiry was directed against Director of

Handloom and Textiles. That apart departmental action has been proposed against Sri P. K. Talukdar, ACS, the then Director of Handloom and Textiles. It is stated that an amount of Rs.28,47,29,028.00 was released to M/s Mafatlal Industries Ltd. against supplies made by it following directions made by this Court.

19. Petitioner in its reply affidavit has stated that a meeting was held by Hon'ble Chief Minister, Assam on 31.12.2015 which was attended by Ministers and high officials. The meeting discussed about distribution of blankets and yarns under the Chief Minister's Special Programme for the year 2015-16. In respect of group A, Handloom, Textiles and Sericulture Department was advised to negotiate the rates with the single bidder and reduce it to the extent possible whereafter order for supply be placed. The said meeting expressed displeasure over the delay in issuing the supply orders. Handloom, Textiles and Sericulture Department was advised that for group B AGMC be asked to supply the yarn at the earliest.

WP(C) No. 2270/2017

20. East India Supply Centre, a partnership firm, is the petitioner in this case. It is stated that pursuant to notice dated 08.01.2016 of AGMC, petitioner submitted quotation for supply of materials in groups A and B covering five legislative constituencies in the districts of Nagaon and Golaghat which was accepted by AGMC whereafter two supply orders were issued on 21.01.2016 for supply of 10025 packets of yarn in group A and 10026 packets of yarn in group D. It is stated that petitioner had executed an agreement with AGMC on 21.01.2016 whereafter the supplies were made. Thereafter two bills dated 16.02.2016 were raised by the petitioners, one of Rs.99,79,887.50 for group A and the other of Rs.99,80,883.00 for group D.

21. However, the bill amounts have not been paid. Representations submitted on 31.05.2016, 08.08.2016, 30.01.2017 and 27.02.2017 failed to yield any result.

22. Hence the writ petition seeking a direction to the respondents to release the bill

amounts as above.

23. Identical affidavits have been filed by the respondents in this case.

WP(C) No. 4493/2017

24. In this case, M/s SS Enterprise is the petitioner. In terms of supply order dated 21.01.2016 issued by AGMC petitioner supplied 10025 packets of cotton yarn for distribution in Kaliabor and Samaguri constituencies on 27.10.2016 under the Chief Minister's Special Programme for the year 2015-16. Thereafter, petitioner raised bill dated 09.02.2016 for an amount of Rs.99,79,888.00. However, bill amount has not been released by AGMC.

25. Aggrieved, present writ petition has been filed seeking a direction to the respondents for release of the aforesaid amount.

26. Respondents i.e. AGMC, Director of Handloom and Textiles and Finance Department have filed separate affidavits taking identical stand as in the other cases.

27. In his reply affidavit, petitioner has relied upon a note of Additional Chief Secretary, Handloom, Textiles and Sericulture dated 04.01.2016 put up before Chief Secretary, Assam stating that since rate quoted for group A was very high, AGMC may be asked to make the supply. Similarly, for group B, since there was no tenderer AGMC may be asked to supply the yarn.

WP(C) No. 6778/2017

28. M/s Jhuria Readymade Centre, a proprietorship firm, is the petitioner. It had supplied 10025 packets of yarn to AGMC following supply order dated 21.01.2016 and

agreement dated 21.01.2016. It is stated that after making supply it had raised bill on 12.02.2016 for an amount of Rs.99,79,888.00. However, the bill amount has not been paid though supplies were made.

29. Referring to supplies made by M/s Mafatlal Industries Ltd. it is stated that initially for supplies made by it payment was not made because of which two writ petitions were filed being WP(C) Nos. 1853 and 2744 of 2016. The writ petitions were disposed of on 07.04.2017 by directing the State to make payment of Rs.28,47,29,028.50. When this amount was not paid contempt petition was filed by M/s Mafatlal Industries Ltd. which was registered as Contempt Case(C) No. 466/2017. Only after notice was issued in the contempt case payment was made.

30. Aggrieved, present writ petition has been filed seeking a direction to the respondents to release the bill amount of the petitioner.

30.1. Identical affidavits have been filed by the Finance Department as well as by the AGMC.

WP(C) No. 6780/2017

31. In this case, M/s Tribeni Enterprise, a proprietorship firm, is the petitioner. It is stated that following supply order dated 09.02.2016 issued by the AGMC, petitioner as the handling agent supplied 22,557 packets of yarn to AGMC under the Chief Minister's Special Programme for the year 2015-16. It is also stated that agreement was signed between petitioner and AGMC on 09.02.2016 which governed the supply. After making the supply, petitioner raised bills totaling Rs.2,24,55,493.50. Grievance expressed by the petitioner is that despite raising of bills dues of the petitioner have not been settled.

32. Reference has been made to payment of dues to M/s Mafatlal Industries Ltd. for

supplying yarn and to Youngman Woollen Mills Ltd. for supply of polar blankets.

33. Therefore, present writ petition has been filed seeking a direction to the respondents to release the supply dues.

34. Identical affidavits have been filed by the Finance Department as well as by AGMC.

WP(C) No. 6781/2017

35. M/s Kameng Engineering, a proprietorship firm, is the petitioner in this case. It had supplied 19,025 and 11,050 packets of yarn pursuant to supply orders dated 21.01.2016 and 06.02.2016 of AGMC to the petitioner which was followed by signing of agreements between petitioner and AGMC.

36. After making the supplies, petitioner raised bills totaling Rs.2,99,34,685.00. However, grievance of the petitioner is that notwithstanding submissions of such bills payment has not been made to the petitioner. Hence, the writ petition.

37. Identical affidavits have been filed by the AGMC and Finance Department, Govt. of Assam.

WP(C) No. 7512/2017

38. M/s Kiran Reed Industries, a proprietorship firm, had supplied 15037 packets of yarn in groups A and B pursuant to supply order of AGMC dated 21.01.2016 and execution of agreement of even date. For such supply, petitioner had raised bill on 23.02.2016 for an amount of Rs.1,49,69,333.50 before AGMC. However, bill amount has not been settled.

39. Aggrieved, present writ petition has been filed.

40. Affidavits filed by AGMC and Director of Handloom and Textiles are on similar lines.

WP(C) No. 7518/2017

41. Here, M/s Sumit Enterprise, a proprietorship firm, is the petitioner. It had supplied 15037 packets of yarn for groups A and B pursuant to supply order of AGMC dated 21.01.2016 and signing of agreement of even date. After making the supply, petitioner raised bill dated 23.02.2016 for an amount of Rs.1,49,69,333.50. However, no payment has been made.

42. Representations submitted on 10.08.2017 and 25.10.2017 failed to elicit any response.

43. Aggrieved, present writ petition has been filed seeking a direction to the respondents for payment of the supply dues with interest.

44. Affidavits have been filed by AGMC and Director of Handloom and Textiles taking identical stands.

Submissions

45. Learned counsel for the petitioners have argued that petitioners had executed the supply orders issued by Managing Director of AGMC, which is a Government of Assam undertaking. It is contended that decision to offer supply order to AGMC for group B was taken at the highest level in the meeting chaired by Hon'ble the Chief Minister. On the other hand, because of high price quoted by the single tenderer in group A proposal was moved by none other than Additional Chief Secretary to offer supply order to AGMC. Therefore, there is no infirmity in awarding the supply order to AGMC. In this connection, reference has been made to the memorandum of association of AGMC wherefrom it is submitted that one of the

objects of AGMC is to undertake supply of raw materials for small and small scale industries and to enter into contracts with and take up indents from the Govt. of India and the State Governments and to arrange for the performance of such contracts and indents by sub-contracting them. No objection has been raised either in respect of quality or quantity of the supplies made. After receiving of supplies withholding of payments is not justified. State has to make payment to AGMC and only thereafter payment can be made to the petitioners by AGMC. It is therefore contented that necessary directions may be issued to the respondents for release of funds.

46. On the other hand, Mr. D. Saikia, learned Sr. Additional Advocate General, Assam submits that he appears on behalf of the Finance Department, Govt. of Assam as well as Handloom, Textiles and Sericulture Department, Govt. of Assam. He would not appear on behalf of Director of Handloom and Textiles, Assam and AGMC. Referring to the stand taken by the Finance Department in its affidavit, he submits that there was only one tender each for groups A, C, D, E and F. Therefore, as per established procedure the tender process should have been cancelled and there should have been re-tender because of single tender. In respect of group B, no tender was submitted. Therefore, this group should have gone for re-tender. Instead of doing that Director had issued supplied order to the single tenderer M/s Mafatlal Industries Ltd. for groups C, D, E and F. In view of supplies made by the said bidder and considering the orders of this Court, payment was made to M/s Mafatlal Industries Ltd. but for group A after the single tenderer M/s Trade Supply (India) withdrew from the tender process, supply order was given to AGMC though AGMC had not submitted tender. In respect of group B, even though no tender was submitted, supply order was given to AGMC. These are gross violations of tendering norms completely vitiating the tender process. Referring to the agreements entered into between Govt. of Assam and AGMC, he submits that such agreements are nonest in the eye of law. Govt. of Assam had not authorized Director of Handloom and Textiles to represent it. Director of Handloom and Textiles cannot represent Govt. of Assam. On the other hand, AGMC was represented by Finance Manager and not by Managing Director. Therefore, such agreements were illegal and were used as a mechanism to hand out supply orders to certain parties without following any rational criteria, simply on the basis of

pick and choose. As such, petitioners cannot claim any legal right for payment of money from the Government. Otherwise also it is a matter between petitioners and AGMC governed by contract agreement between the two on the basis of which no claim against the Government would be maintainable. In such circumstances, learned counsel seeks dismissal of the writ petitions.

47. Ms. M. Bhattacharjee, learned Government Advocate, Assam appearing for the Director of Handloom and Textiles, Assam supports the tender process and submits that Director had acted as desired by the higher authority. Further, the tender committee had ensured that while the supply was executed expeditiously by distributing the work amongst a number of tenderers but at the same time it was also ensured that no loss was caused to the state exchequer as all the supplies were made at L1 rate. Reduction of quantity and distribution amongst other tenderers was not objected to by the L1 tenderer.

48. Learned counsel for AGMC Shri S. Chamaria submits that AGMC being a Government of Assam undertaking was awarded supply order at L1 rate. Memorandum of Association of AGMC permits execution of supply works through sub-contracts. Therefore, AGMC got the supply works executed through the petitioners who are registered with the AGMC as handling agents. Petitioners while executing the supplies stepped into the shoes of AGMC. As such, no illegality was committed.

Discussions and analysis

49. Submissions made by learned counsel for the parties have been considered.

50. From the pleadings and submissions what is discernible is that Director of Handloom and Textiles, Assam had issued e-tender notice on 07.12.2015 for supply of two categories of cotton yarn from **registered manufacturers** or **authorized dealers** for procurement under the Chief Minister's Special Programme for the year 2015-16. The tender was divided into six groups i.e, from group A to group F covering different districts.

51. On evaluation of technical bids by the tender committee on 28.12.2015, it was found that only two bidders had submitted tenders. M/s Mafatlal Industries Ltd. had submitted tender for groups C, D, E and F whereas M/s Trade Supply (India) had tendered for only group A. No tenderer had submitted tender for group B. Though tender committee had referred the matter to the Government for necessary suggestions/instructions, there is nothing on record to show suggestions or instructions by the Government.

52. On the next date, i.e. on 29.12.2015 tender committee evaluated the price bid and decided to approve the rates quoted by M/s Mafatlal Industries Ltd. for groups C, D, E and F. Regarding group A, it was decided that negotiation would be done with the bidder to bring the rate at par with the other four groups. In so far group B was concerned, it was decided that rate offered by M/s Mafatlal Industries Ltd. be accepted and offered to “*interested bidders*”. Interestingly, M/s Mafatlal Industries Ltd. did not submit tender for group B; therefore, question of accepting the rate offered by M/s Mafatlal Industries Ltd. did not arise. Further, question of making offer to “*interested bidders*” also did not arise as no bids were submitted. Therefore, there were no bidders. Question is, who were the “*interested bidders*”?

53. At this stage, it is seen that AGMC had issued notice inviting quotation and expression of interest on 08.01.2016 for supply of the two varieties of yarn mentioning that terms and conditions of supply would be as laid down in the e-tender notice issued by the Director of Handloom and Textiles, Assam on 07.12.2015. Interestingly, Director of Handloom and Textiles placed order for supply of yarn with the Managing Director of AGMC pursuant to e-tender notice dated 07.12.2015 much after 08.01.2016 on 20.01.2016. How was this possible only the Director and Managing Director can say!

54. Three things are noticeable here. Firstly, supply order is dated 20.01.2016. But before issuance of such supply order AGMC had issued notice inviting quotation and expression of interest for the same supply on 08.01.2016. Secondly, AGMC was not a tenderer in the tender process as it had not submitted tender pursuant to the e-tender notice dated

07.12.2015. Issuance of supply order to a party which was not a tenderer in the tender process is a clear deviation from the tendering norms. Even if the fact that there was only one tender each for groups A, C, D, E and F, after the lone tenderer in group A had withdrawn from the tender process, atleast groups A and B where there was no tender should have put to re-tender. Lastly, is AGMC a *registered manufacturer* or *authorized dealer* of cotton yarn? If not, it was not eligible to bid. Question therefore arises as to whether an ineligible party which on top of it did not bid, could have been awarded supply order by the Director? Thus, issuance of supply order to AGMC was clearly beyond the tender.

54.1. It is also seen that agreements were entered into between Govt. of Assam and AGMC governing such supply. On behalf of Govt. of Assam, the agreement was signed by Director of Handloom and Textiles, Assam. Unless specifically authorized, a Director cannot ordinarily represent the Government. In the affidavits filed by Director of Handloom and Textiles, Assam no such authority letter has been placed on record. On the other hand, AGMC was represented by Manager (Finance). In the affidavits of AGMC, there is neither any statement nor any document to show that Manager (Finance) was authorized by AGMC to sign such deeds of agreement. But more significantly, it is the signing of the agreement by the Director on behalf of the Govt. of Assam which has rendered such deed of agreement highly questionable; rather invalid.

55. Coming to AGMC, affidavits of AGMC have not disclosed as to what happened pursuant to notice inviting quotation and expression of interest dated 08.01.2016. Did anybody submit expression of interest? On the contrary, it is seen that after the supply order was received by the AGMC from the Director later, on 20.01.2016, AGMC issued supply orders to the petitioners on the very next day i.e. on 21.01.2016. What procedure was followed by AGMC in issuing the supply orders has not been disclosed. It is thus clear that petitioners were awarded the supply orders on pick and choose basis.

56. Similar issue has arisen in respect of supply of polar blankets and non-payment of supply dues thereafter to the suppliers. This issue has been decided today by a separate

judgment in WP(C) No. 2610/2017 and other connected cases. Relevant portion of the said judgment and order is extracted hereunder:-

“72. Certainly, issuance of multiple supply orders following the tender process pursuant to NIT dated 30.10.2015 has raised a lot of questions. At the same time it is also true that Finance Department as well as Handloom, Textiles and Sericulture Department, Govt. of Assam have not raised any objection regarding deficiency in the supplies, whether be it of quantity or of quality. Therefore, this is also an aspect which needs to be considered. Can the suppliers who had made the supplies be penalised for wrong doing of the authorities? If wrong doing has taken place, and certainly it appears it has taken place, can only the Director of Handloom and Textiles be singled out and made the scapegoat? Or could there be other persons who had compelled the Director to adopt such a procedure? And what about the role of AGMC? As discussed above, conduct of AGMC is not above board.

73. Article 299 of the Constitution of India deals with Government contracts. Clause (1) says that all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize. However, clause (2) makes it clear that neither the President nor the Governor shall be personally liable in respect of such contract or assurance.

74. Thus what emerges from the above is that Government contracts must be expressed in the name of the President or the Governor. Such contract shall be executed by the competent person and in the prescribed manner. The use of the expression “shall” in clause (1) of Article 299 is indicative of its mandatory character. If the requirements of clause (1) of Article 299 are not satisfied, then the Government is not bound by the contract.

*75. In **State of Punjab -vs- Om Prakash Baldev Krishan, AIR 1988 SC 2149**, Supreme Court held that a contract entered into by the State must satisfy three conditions:-*

- (1) it must be expressed to be made by the Governor;*
- (2) it must be executed;*
- (3) the execution should be by such persons and in such manner as the Governor might direct or authorize;*

*These three conditions are required to be fulfilled. Examining the provisions of Section 175 (3) of the **Government of India Act, 1935** and the corresponding provisions of Article 299 (1) of the Constitution, it was held that these provisions have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorized contracts. These provisions were embodied earlier in Section 175(3) of the **Government of India Act, 1935** and now in Article 299(1) of the Constitution of India on the ground of public policy—on the ground of protection of general public. These conditions cannot be waived or dispensed with. State should not be saddled with liability for unauthorized contracts; the contracts must show on their faces that these were made by the Governor and executed on his*

behalf in the manner prescribed.

75.1. *Rule 12 of the Assam Rules of Executive Business, 1968 says that every order or instrument of the Government of the State shall be expressed to be made in the name of the Governor and shall be signed either by a Secretary, an Additional Secretary, a Special Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or such other officer as may be specially empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument. Carefully read, this provision mentions three requirements. Firstly, every order or instrument of the Government of Assam shall be expressed in the name of the Governor. Second requirement is that it must be signed by any of the officers mentioned therein. Thirdly, it can also be signed any other officer but he/she has to be specially empowered in that behalf. When the above conditions are fulfilled, such signature shall be deemed to be the proper authentication of such order or instrument.*

76. *Reverting back to the present cases, it is seen that contract agreements were signed by the Director of Handloom and Textiles, Assam on behalf of the Government of Assam. There is no recital in the contract agreements or any averment in the affidavits filed by the Director of Handloom and Textiles, Assam that he was authorized by the Governor of Assam to enter into and execute such contract agreements. In the absence of such authorization, such contract agreements would be invalid and cannot be binding on the Government. Evidently those are in complete violation of Article 299 (1) of the Constitution of India as well as Rule 12 of the Assam Rules of Executive Business, 1968. In so far contract agreements entered into by AGMC with the suppliers are concerned, it is entirely a matter between the two and no claim can be made against the Government on the basis of such contract agreements. There was no privity of contract between the State or even the Director and the petitioners. Therefore, State cannot be saddled with the liability to pay the amounts claimed by the petitioners.*

77. *At this stage, Section 70 of the Indian Contract Act, 1872 (Contract Act for short) may be adverted to. Section 70 says that where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore the thing so done or delivered. Thus, on a careful reading of Section 70 what is evident is that a claim under the section is for compensation. But for payment of such compensation three conditions must be fulfilled. Firstly, the thing or act must be done lawfully. Secondly, it must not be gratuitous. Lastly, the person who is called upon to make compensation must enjoy the benefit of the act or thing on the basis of which compensation is claimed.*

78. *Constitution Bench judgment of the Supreme Court in State of West Bengal-Vs-M/s B. K. Mondal, AIR 1962 SC 779 is the leading decision on this provision. Supreme Court held that the above three conditions must be satisfied before Section 70 can be invoked. Elaborating the rationale behind Section 70, Supreme Court held that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus, where a claim for compensation is made by one person against another under Section 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was*

done by the party for another and the said work so done has been voluntarily accepted by the other party. Of course Supreme Court clarified that between the person claiming compensation and the person against whom it is claimed some lawful relationship must subsist. Explaining the implication of the word “lawfully” as appearing in Section 70, Supreme Court held that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter then a lawful relationship is born between the two which under Section 70 gives rise to a claim for compensation. Regarding claim made against the Government of a State under Section 70, Supreme Court held that an invalid request is in law no request at all and so conduct of the parties has to be judged on the basis that there was no subsisting contract between them at the material time. Supreme Court finally concluded that Section 70 deals with cases where there is no valid contract and provides for compensation to be paid where the three requisite conditions prescribed are satisfied, thus operating in a field separate and distinct from Section 175 (3) of the **Government of India Act, 1935** which deals with Government contracts and how those should be made.

79. Upshot of the above discussion is that the contract agreements signed by the Director of Handloom and Textiles, Assam are not valid as the conditions under Article 299 (1) of the Constitution have not been satisfied; so also the requirement of Rule 12 of the **Assam Rules of Executive Business, 1968**. On the other hand, those contract agreements signed by the AGMC with the suppliers cannot be the basis of any claim by the suppliers against the Government, there being no privity of contract between the two. Therefore, Article 299 (1) would rule out any payment by the Government to the suppliers on the strength of such contract agreements. That brings Section 70 of the **Contract Act** into the picture. While certainly supplies were not made by the petitioners gratuitously, for a lawful relationship to be established between the petitioners and the State it is required to be ascertained as to whether the goods (polar blankets) were accepted and enjoyed by the latter. A decision has to be taken by the State in this regard.

80. While denial of payment would result in hardship to the suppliers, it will also not be just, proper, ethical as well as lawful to turn a blind eye to such illegality and apparent misuse of Governmental machinery.

Conclusions and decisions

81. In such circumstances, Court is of the view that a High Powered Committee is required to be constituted to look into the above aspects and thereafter to take appropriate decisions. The High Powered Committee should comprise of the following officials:-

1. Addl. Chief Secretary to the Govt. of Assam, to be nominated by the Chief Secretary;
2. Commissioner and Secretary to the Govt. of Assam, Finance Department;
3. Commissioner and Secretary to the Govt. of Assam, Handloom, Textiles and Sericulture Department;
4. Commissioner and Secretary to the Govt. of Assam, Judicial Department; and

5. *Special Director General of Police, CID, Assam.*

82. *The above committee shall be constituted within 15 days from the date of a receipt of a certified copy of this order and will have its first meeting within 7 days of its constitution.*

83. *The committee shall examine payment of dues to the petitioners for supply of polar blankets having due regard to quantity and quality of the materials supplied and having regard to the discussions made above particularly in the context of Section 70 of the **Contract Act**; in this regard, Committee shall take a decision whether the goods (polar blankets) were accepted and enjoyed. Further, committee shall examine violation of tendering norms and guidelines in the tender process pursuant to NIT dated 30.10.2015 and fix responsibility whereafter departmental steps may be taken. The mode and manner of issuance of supply orders by AGMC shall be looked into. Committee shall also examine as to whether there was any criminality involved in the tendering and supply process involving various persons. If such examination results in an affirmative finding, Commissioner and Secretary to the Government of Assam, Handloom, Textiles and Sericulture Department shall lodge first information before the CID Police Station whereafter law will take its own course.*

84. *Ordered accordingly.*

85. *The High Powered Committee as above shall complete the exercise within 4 (four) months from the date of its first sitting."*

Conclusions and decisions

57. The conclusions and decisions in WP(C) No. 2610/2017 and other connected cases will govern this bunch of cases as well. The High Powered Committee shall also examine the issue of payment to the suppliers of cotton yarn alongwith polar blankets in terms of the directions issued in paragraph 83 as extracted above.

58. Ordered accordingly.

59. The High Powered Committee as above shall have its first meeting within 7 days of its constitution and shall complete the exercise within 4 (four) months from the date of its first sitting.

60. Writ petitions are accordingly disposed of. However, there shall be no order as to cost.

JUDGE

Comparing Assistant