

GAHC010107162020



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

Case No. : I.A.(Civil) 1346/2020

1:ENGINEERING PROJECT (INDIA) LIMITED AND 3 ORS
A GOVT. OF INDIA ENTERPRISE, C.G.O. COMPLEX, LODHI ROAD, NEW
DELHI 110003

2: THE GROUP GENERAL MANAGER
ENGINEERING PROJECT (INDIA) LTD.
A GOVT. OF INDIA UNDERTAKING
NORTH EAST REGIONAL OFFICE
VASTAV COMPLEX
1ST FLOOR
TRIPURA ROAD
JAYA NAGAR
BELTOLA
GUWAHATI 781028 IN THE DIST. OF KAMRUP (M)
ASSAM.

3: THE GENERAL MANAGER
ENGINEERING PROJECT (INDIA) LTD.
A GOVT. OF INDIA UNDERTAKING
M/12 VENGLAI CHALTLANG
P.O. AIZAWL 796012

4: THE PROJECT ENGINEER
ENGINEERING PROJECT (INDIA) LTD.
SITE OFFICE DIMAGIRI
TLABUNG
DIST.LUNGLEI
MIZORA

VERSUS

1:M/S J.A BROTHERS

(A PROPRIETARY FIRM), REPRESENTED BY SRI JAMES AKHAM, THE PROPRIETOR OF M/S J.A. BROTHERS, REGISTERED OFFICE ADDRESS NEAR MOTHER MARY SCHOOL, DHOBINALA, P.O. DIMAPUR 797112, NAGALAND

Advocate for the Petitioner : MR. D BARUAH

Advocate for the Respondent : MR A DASGUPTA

BEFORE
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

ORDER

Date : 30-09-2020

Heard Mr. D. Baruah, learned counsel for the applicants. Also heard Mr. A. Dasgupta, learned Senior Counsel assisted by Ms. K. Jain, learned counsel for the respondent.

This is an application under Order XLI Rule 5 CPC for stay of the impugned order which is the subject matter in the connected appeal under Order XLIII Rule 1(r) of CPC. The respondent was allotted the work for construction of border outposts at various locations along Indo-Bangladesh border in the State of Mizoram. The respondent was handed over two sites at Barapansuri and Jarralchuri, immediately after the agreement was signed. In total 13 Nos of border outposts were to be constructed. Finally the contract was terminated by the present appellants/petitioners vide letter dated 20.3.2017. Thereafter on 13.11.2018 and 14.11.2018 three tenders were floated for completion of the work allotted to the respondent contractor. The respondent filed Title Suit No.527/2018 in the court of learned Civil Judge No.1 Kamrup (M) at Guwahati. Alongwith the suit, an injunction application was also filed which was registered as Misc (J) Case No. 882/2018 praying interalia for an injunction to restrain the appellants from floating and processing any fresh tender against the incomplete work allotted to the respondent. The learned court below vide order dated 30.11.2018 passed

an ad-interim ex parte injunction in the said Misc(J) Case No. 882/2018 restraining the appellants from giving effect to the tender notice dated 13.11.2018 and 14.11.2018 till the next date. The restraining order continued.

In the mean time, the e-tenders floated on 13.11.2018 and 14.11.2018 were annulled due to elapse of time and to that effect three corrigendum were issued by e-publishing system, Government of India. Finally the learned court below disposed of the said Misc (J)Case No. 882/2018 vide order dated 20.12.2019 which is impugned in the connected appeal holding as follows:

“Balance of convenience is apparently favouring the petitioner because being a successful bidder and being reasonably restrained from completing the works, the works entrusted to be completed could not be done as per the date as reflected in the contract work. At this stage the scale of balance therefore lies in favour of the petitioner more than that of the O.Ps.

Undoubtedly the petitioner has submitted 4 nos. of bank guarantee and if the petitioner is restrained from carrying out his works he will be facing financial loss to a great extent which in the subsequent stages cannot be compensated. Further, rescinding any contractual works must be with probable reasons but in the case at hand the rescinding of the work from the petitioner at this juncture does not seem to be probable and so it is very much clear that the petitioner will face irreparable loss if protection is not accorded to him through a judicial order.

In view of the discussion made above there is no doubt to the fact that the petitioner is able to show that he has a prima facie case, balance of convenience lies in his favour and he will face irreparable loss in the event of refusal of injunction. Accordingly the prayer sought by the petitioner seeking temporary injunction is allowed restraining the O.P Nos. 1,2 & 3 from giving effect to the tender dated 13.11.2018 and 14.11.2018 to any third party till disposal of the main suit, and the ad-interim injunction dated 30.11.2018 is hereby made absolute.

The Misc (J) case is disposed of on contest without cost.”

Mr. Boruah seeking for stay of the said order submitted that the order under no circumstances could sustain the scrutiny under the law. The work involved in the said tender process is of utmost importance for the nation's security. Further the work involves public interest in the form of security of the country. The court below ought to have considered the said aspect of the matter. Accordingly it is his contention till disposal of the appeal, the operation of the impugned order be stayed.

Mr. Dasgupta, learned Senior counsel on the other hand, submits that the court below was prima facie satisfied to hold that the other requirements for granting an order of injunction were found in favour of the respondent and as such the court below applied its discretion considering the ingredients required to pass the order of injunction. Accordingly he sought for disallowing the prayer for stay.

I have given due consideration to the submission made by the learned counsel. Without entering into the merit of the findings of the court below on perusal of the contract documents annexed in this petition, I am satisfied that the completion of the construction of border outposts is of vital importance to the security of the country. The issue involved in the suit filed by the respondent can very well be decided after evidence is led by both the parties. Moreover if at all the plaintiff respondent succeeds in the suit he could very well be compensated in terms of money. On the other hand, if the order under challenge in the connected appeal is allowed to remain in force irreparable loss would be caused to the petitioner appellant and as such, I am inclined to stay the operation of the impugned order dated 20.12.2019 passed in Misc(J) Case No. 882/2018 arising out of T. S No.527/2018 pending in the court learned Civil Judge No.1, Kamrup(M) at Guwahati and the petitioners shall go ahead with fresh tender process without applying the risk and cost liability on the respondent contractor till the disposal of the connected appeal and the same shall be considered at the time of disposal of the appeal.

The necessary formalities before handing over the site to prospective fresh contractor/contractors shall be maintained by the petitioners as per the terms and condition of the contract entered into by the petitioner and the respondent contractor.

Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant