

reserving Judgment & Order :: 29.03.2023

Date of Judgment & Order :: **04.04.2023**

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, Acting CJ)

This public interest litigation has been filed by the petitioner, who is a practising lawyer, seeking issuance of a writ of mandamus directing the respondents to complete the balance/remaining work for construction of Capital Complex (Civil Secretariat Component) at Mantripukhri, Imphal, so that the existing Manipur Secretariat may be shifted to the new building and there is no traffic congestion.

2. The case of the petitioner is that in October, 2010, the work for construction of Civil Secretariat was awarded to M/s.Simplex Projects Limited and since M/s.Simplex Projects Limited was not able to complete the construction work within the stipulated time, the contract was terminated vide letter dated 2.11.2019. Thereafter, on 28.12.2019, the Public Works Department issued a fresh Notice Inviting Tender (NIT) for the Civil Secretariat work, which was also challenged by M/s.Simplex Projects Limited and finally, this Court, vide judgment and order dated 13.1.2021 in W.A.No.39 of 2020, directed the parties to have a final joint measurement and after completion of the joint

measurement, liberty was given to the State to proceed with the construction of the Civil Secretariat Complex by following the required formalities and procedures as provided by law.

3. Further case of the petitioner is that as per the joint measurement, the balance work estimation was determined and NIT for the work “Construction of Capital Complex” at Mantripukhri was invited on 19.2.2021 till 15.3.2021 in two-bid system comprising of technical and financial bid. The fourth respondent M/s.Sri Avantika Contractor (I) Limited emerged as successful bidder and was awarded the work on 27.5.2021 within a condition to complete the work within 12 months and the contract agreement was also executed between the fourth respondent and the State. The execution of the work was also started by the said firm. However, the said balance work could not be completed by the said firm within the stipulated period and M/s.Sri Avantika Contractor (I) Limited requested for extension of time and the deadline for completion of the said balance of work was extended upto 30.9.2022. However, the work yet to be completed without assigning any reason. The non-completion of the said work till date is causing inconvenience to the general public passing through the eastern side of the present Manipur

Secretariat. Hence, the petitioner has filed the present public interest litigation.

4. The respondents 2 and 3 filed affidavit stating that the present public interest litigation suffers from technical defects, as no representation was made to the authorities concerned for remedial actions before filing this petition by the petitioner as per the High Court of Manipur Rules, 2019. Hence, the motive of this petition is ill-conceive and liable to be dismissed.

5. The fourth respondent filed affidavit stating that the fourth respondent was aware of the issue of congestion faced in the Highway adjacent to the existing Secretariat. Even though, the traffic congestion may be attributed on various factors, the fourth respondent believes that if the subject project is completed, the traffic will be decongested from the Highway adjacent to the existing Secretariat. It is stated that while the fourth respondent had initiated works at the site, a number of impediments, including restrictions due to Covid-19 pandemic, curfews enforced by the Government, impeded the pace of the project. Some part of the work was being done by certain unauthorized contractors at the site and the fourth respondent always kept the Public Works Department abreast of the situation

and sought appropriate measures to mitigate these impediments. In the month of August, 2021, the fourth respondent procured all requisite materials for the project as per the specifications and in the process, certain deviations and extra items were noticed due to change in the site conditions and they were also duly notified to the PWD. Some of the deviations/extra items were approved by the PWD only after a year. Despite the impediments, the fourth Respondent was entrusted to work on the prestigious project and also offered to conduct extra landscaping and horticultural works at the site. The fourth respondent, accordingly, carried out extra items.

6. It is stated that immense pressure was put on the fourth respondent to complete the works earlier than the stipulated time period, however, on the contrary the PWD would never clear the payments to the fourth respondent on time nor approve deviations, rate analysis etc. in a timely manner. After the newly elected State Government came in, there was an added pressure on the fourth respondent to finish the project prior in time for inauguration. However, even then, the PWD did not take commensurate steps to facilitate such faster rate of work by the fourth respondent. Clause 7 of the General Conditions of the contract applicable in the present case stipulates that

payments shall be made within 45 days of presentation of the bill, failing which simple interest at the rate of 5% shall accrue on such bills.

7. It is further stated in the affidavit that the fourth respondent is diligently carrying on the works at the site and about 95% of the works at the site are complete. Despite completion of 95% work, out of the total bill of Rs.100.78 crore submitted by the fourth respondent, the PWD has only paid a sum of Rs.69.11 crore and currently, there is an outstanding of Rs.31.67 crore due to the fourth respondent by the PWD. The approval on a large number of deviation items sought by the fourth respondent has not been considered by the PWD and remains actionable at their end. Hence, there is a delay in completing the subject project and the fourth respondent is no way related to the said delay.

8. The learned counsel for the petitioner submitted that the non-completion of the Civil Secretariat caused inconvenience/grievances to the general public passing through the eastern side of the present Manipur Secretariat, as both halves of the National Highway in front of the Secretariat are occupied by the parked vehicles of the officers/employees and securities of VIPs, which has caused traffic congestion. Thus, a

prayer is made to direct the respondents to complete the balance work within the time frame so that the present Manipur Secretariat may be shifted to the new building at Mantripukhri.

9. The learned Additional Advocate General appearing for the official respondents submitted that there is technical defect in the public interest litigation, as there is no representation made to the authorities concerned for remedial actions before filing the public interest litigation. He would submit that the vehicles parked on the National Highway-102 in front of the Manipur Secretariat are managed by the Imphal Municipality and action is being taken against the illegally parked vehicles on the NH-102 under Sections 24 and 27 of the National Highways (Land and Traffic) Act, 2002. Thus, a prayer has been made to dismiss the present public interest litigation.

10. The learned counsel appearing for the fourth respondent submitted that the fourth respondent is a contractor entrusted with completion of the subject project and is aware of the issue of congestion faced in the Highway adjacent to the existing Secretariat. Even though, the traffic congestion attributed on various factors, it verily believes that if the Civil Secretariat work is completed, the traffic will be decongested from the Highway adjacent to the existing Secretariat.

11. The learned counsel for the fourth respondent would submit that it mobilized its team to the site by June, 2021. However, it faced several difficulties upon visiting the site, including security issues as number of unauthorized personnel were gaining access to the site, handover of the drawings, materials, etc. for commencement of the work. It had kept the Public Works Department informed about all these impediments. However, the Public Works Department has always reacted with indifference or lethargy. After the initiation of works at the site, a number of impediments, including restrictions due to Covid-19 pandemic, impeded the pace of the project. Further, the works related to the CCTV surveillance was arbitrarily descope, causing opportunity loss and loss of profit to the fourth respondent as the work amounting to Rs.42.43 crore was descope from the agreement.

12. The learned counsel for the fourth respondent next submitted that the fourth respondent is diligently carrying on the works at the site and about 95% of the works are completed and out of the total bill of Rs.100.78 crore submitted by the fourth respondent, the PWD has only settled Rs.69.11 crore and currently, there is an outstanding of Rs.31.67 crore due to it by the PWD. According to the fourth respondent, lack of timely

payments has seriously impeded its speed and affected the timely delivery of the project and it will be in a position to ensure completion of its contractual obligation within a period of three months, only if the payments due to it are made within the time and the rate of the deviations and extra items are approved by the Department.

13. In reply, the learned Additional Advocate General, by producing the present status of payment of bills settled to the fourth respondent for the work “Construction of Capital Complex (Civil Secretariat Component)”, submitted that the fourth respondent has submitted excessive bills beyond the value of the work, which is payable as per agreement. The Executive Engineer of Public Works Department returned the bills to make corrections vide letters dated 27.1.2023 and 25.3.2023. The probable liability amount of the fourth respondent may be Rs.18.90 crore approximately.

14. The learned Additional Advocate General again by referring to the present status of payment of bills submitted that there is more to recover than to pay to the fourth respondent. Therefore, the completion of the subject project is not related on the payment to the fourth respondent.

15. We have considered the rival submissions and also perused materials available on record.

16. The grievance of the petitioner is that due to parking of vehicles along both sides of the National Highway in front of the Secretariat, there is traffic congestion, which is mainly for the reason of non-completion of the construction work of Civil Secretariat Component. Therefore, a direction may be issued to the official respondents to complete the balance work of Capital Complex (Civil Secretariat Component) at Mantripukhri, Imphal within a time frame.

17. The official respondents contended that no representation was submitted by the petitioner to the authorities for remedial action before filing the public interest litigation and on that sole ground, the present public interest litigation is liable to be dismissed. Coming to the traffic congestion alleged by the petitioner, it is the say of the official respondents that the vehicles parked on the National Highway-102 in front of the Manipur Secretariat are managed by the Imphal Municipality and action is being taken against the vehicles parked illegally.

18. The non-submission of the representation to the respondent authorities for remedial measures before filing the

public interest litigation would not in any way technically affect the present petition for the simple reason that the cause brought to the notice of this Court by the petitioner by way of this public interest litigation assumes larger public interest. There is no quarrel that if anyone wants to take up the matter that demands Government action, he has to first raise that issue with the authorities, bring it to their knowledge and ask them how are they going to solve it, for which he has to send a representation in the first place to authorities. But in the case on hand, the situation is traffic congestion within the heart of Imphal City, particularly, eastern side of the present Manipur Secretariat along the National Highway, which has been witnessed by the Government officials, including the police personnel day in and day out. The work contractor, namely the fourth respondent, also stated that if the subject project is completed, the traffic will be decongested from the Highway adjacent to the existing Secretariat. When such being the statement of the fourth respondent and the traffic congestion alleged by the petitioner in the present public interest litigation is not vague, the non-submission of representation by the petitioner to the respondent authorities for remedial measures before filing the public interest litigation is not affected the case of the petitioner.

19. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The Court has to strike balance between two conflicting interests - (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

20. Public interest litigation was intended to mean nothing more than what words themselves said, namely "litigation in the interest of the public".

21. It is settled law that a writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective.

22. In the instant case, the petitioner has approached this Court with clean hands and for larger public interest. Since we are satisfied with the credentials of the petitioner, prima facie correctness of the information given by him and also the information given by the petitioner being not vague, the present public interest litigation at the hands of the petitioner is a bona fide one.

23. It is the admitted case of both sides that the delay in completion of the Civil Secretariat work has caused traffic congestion on the Highway adjacent to the existing Secretariat as both halves of the National Highway in front of the Secretariat are occupied by the parked vehicles of the officers/employees and securities of VIPs. The said traffic congestion has led to inconvenience to the public passing through the eastern side of the present Secretariat.

24. Though the Civil Secretariat work was started in the year 2010 and even after about 13 years, the same has not been

completed and there appears to be a blame by the fourth respondent contractor on the respondent officials qua lack of timely payment and delay by the Public Works Department in approving the rates of the deviations and extra items. Though the learned Additional Advocate General submitted that there is more to recover than to pay to the fourth respondent and the completion of the project is not related with the payment to the fourth respondent, nothing has been produced to prove the same, except the status of payment of bills, which is a self-styled note prepared and signed by the Executive Engineer, Building Division No.I, PWD, Manipur. On the basis of such self-styled undated note, it cannot be contended that excess payments were made to the fourth respondent. The State Government has to be a role model in settling the contractor for the work done by them and because of non-payment, the work cannot be delayed, as the contractor has to pay salaries to its employees for their hard work done and settle the material cost to the traders.

25. Considering the facts and circumstances of the case and the larger public interest involved, the PIL No.34 of 2022 is disposed of with the following directions:

- (i) The respondent State is directed to decongest the traffic on the National*

Highway in front of the Old Manipur Secretariat by making arrangements for proper park of vehicles on both sides. Further, the respondent State is directed to strictly enforce the traffic rules to ensure illegal parked vehicles are booked.

- (ii) The respondent State and the fourth respondent are directed to comply with their contractual obligations qua the completion of construction of Civil Secretariat work.*
- (iii) The respondent State is directed to pay the Outstanding dues as per the RA Bills raised by the respondent No. 4 and also approve the rates of deviations and extra items regarding the Civil Secretariat work at earliest.*
- (iv) The respondent State and the fourth respondent are directed to co-operate and work in concert with each other to ensure that the Civil Secretariat work is to be completed within a period of three*

*months from the date of receipt of a copy
of this order.*

(v) There will be no order as to costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil