

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

Writ Appeal No.43 of 2016

Appellant:

State of Assam, represented by its Commissioner
and Special Secretary to the Government of Assam,
Public Works Department (Roads),
Dispur, Guwahati-6.

Respondents:

1. Deben Thaosen
Son of Mogen Thaosen
Resident of S.S.Raji, PO Sarkari Bagan
PS Haflong, District Dima Hasao

Proforma Respondents:

2. The Chief Engineer,
Public Works Department (Roads)
Chandmari, Guwahati-3.
3. The Superintending Engineer,
Public Works Department (Roads)
Nagaon Road Circle, Nagaon, Assam
4. The Executive Engineer,
Public Works Department (Roads)
Nagaon, District: Nagaon, Assam
5. Abdul Hanan
FCI Road, Hojai, Nagaon,
Pin:782435
6. Amar Chand Dey
GNB Colony, Hojai, Nagaon
Pin:782435

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

For the appellant : Mr.KN Choudhury, learned
Senior counsel assisted by Mr. B.
Chakrabarty and Mr. D.Z. Das, learned
counsel.

For the Respondents : Mr. A.K. Baruah, Mr.S Biswakarma
& Mr. MP Hazarika, learned counsel

Date of hearing & Judgment: 6.12.2017

JUDGMENT AND ORDER

(Ajit Singh, C.J.)

This intra court appeal is directed against the order dated 28.1.2016 passed by the learned Single Judge in Review Petition No.108/2013 insofar as it relates to initiation of Suo Motu Criminal Contempt Proceeding against Sri MC Boro, the then Commissioner and Special Secretary to the Government of Assam, Public Works Department (Roads).

2. During the relevant period, Sri MC Boro was posted as Commissioner and Special Secretary to the Government of Assam, Public Works Department (Roads) and now he has retired from service on attaining the age of superannuation.

3. On 30.9.2008 Respondent No.1 was awarded a contract by the Public Works Department (Roads) for construction of road and cross drainage under the Prime Minister Gramin Sadak Yojana in District Nagaon. Although the work was to be completed within 18 months, for some reason or the other, Respondent No.1 could not complete 40% of the work even after 4 years. His contract was, therefore, terminated on 3.12.2012. Aggrieved, he preferred an appeal under Clause 24.1 of the General Clause of Contract and since it was not being disposed of he filed WP(C) 377/2013 before this Court. A learned Single Judge vide order dated 1.2.2013 disposed of the writ petition with a direction to the Chief Engineer to decide his appeal on an early date.

4. While the appeal was pending, the Superintending Engineer initiated re-tendering process for the same work in consultation with the Chief Engineer. Also on 26.2.2013, Notice Inviting Tender (NIT) was shown to have been published in two news papers.

5. In the meantime, the appeal filed by Respondent No.1 was dismissed by the Chief Engineer vide order dated 27.2.2013. He, therefore, challenged that order in another appeal before the Standing Empowered Committee envisaged under Clause 24.2 of the General Clause of Contract. And while this appeal was pending, the contract of

completing unfinished work was awarded to other contractors at the risk and cost of respondent No.1.

6. Respondent No.1 then again filed WP(C) No.2515/2013 for a direction to the Standing Empowered Committee to decide his appeal and the learned Single Judge vide order dated 26.6.2013 disposed of the writ petition with a direction to decide the appeal expeditiously. While passing the order, the learned Single Judge also took note of the affidavit filed by Sri MC Boro wherein he stated that pursuant to the fresh tender process contract work had already been awarded to different contractors and that they had also started their works. In compliance of the order, the appeal of respondent No.1 was also finally decided vide order dated 26.5.2014 by the Standing Empowered Committee.

7. Later respondent No.1 filed Review Petition No.108/2013 alleging serious anomalies in the tender process by which his contract work was awarded to other contractors. He alleged that the Notice Inviting Tender was in fact never published in the news papers and the entire tender process was stage-managed. He also alleged that Sri MC Boro in his affidavit made a misleading statement regarding publication of Notice Inviting Tender in the news papers. The learned Single Judge found substance in the allegations and vide order dated 28.1.2016 allowed the Review Petition of Respondent No.1. The learned Single Judge also initiated Suo Motu Criminal Contempt of Court Proceeding against Sri MC Boro and directed the Chief Secretary to cause an enquiry to find out who were the officers responsible for the mischief. It is in this backdrop, the State of Assam has filed the present appeal against the order of the learned Single Judge insofar as it relates to initiation of Suo Motu Criminal Contempt Proceeding against Sri MC Boro.

8. It has been argued on behalf of the State that affidavit, in question, was prepared by the engaged counsel based on instructions furnished by the subordinate officers and the same was signed bonafidely on trust by Sri MC Boro in a routine manner. It has also been argued that Sri MC Boro did admit the mistake on his part for which he has tendered

an unconditional apology and the officers, found to have committed the mischief, have been appropriately punished. On these submissions, prayer is made to pardon Sri MC Boro, more particularly, because he has already retired from service. The learned counsel for respondent No.1, on the other hand, has argued that because of the mischief by the officers of Public Works Department (Roads), grave injustice is caused to Respondent No.1. As regards direction pertaining to initiation of suo motu criminal contempt proceeding, he has left the issue to the discretion of this court.

9. It is to be noted that pursuant to the direction of the learned Single Judge, an enquiry was held by the Additional Chief Secretary to find out who were the officers responsible for the mischief. The Additional Chief Secretary, in his enquiry report dated 10.2.2017, has mainly held one Sri Surendra Nath Das, Superintending Engineer responsible for the mischief in the fake re-tendering process. And, in respect of Sri MC Boro, he has given the following finding:-

“As regards the affidavit dated 17/06/2013 filed by Sri MC Boro, Commissioner & Spl. Secretary, PWRD, it is learnt that it was prepared on the basis of the draft parawise comments submitted by I/C Executive Engineer to Chief Engineer vide letter No.558, dated -03/06/2013. No records regarding forwarding of draft affidavit by the Chief Engineer to Commissioner & Spl. Secretary PWRD are available. Mr.MC Boro Commissioner & Spl. Secretary PWRD seems to have relied on the draft parawise comments submitted by the I/c Executive Engineer while preparing the affidavit. The Superintending Engineer Sri Surendra Nath Das seems to have kept his senior officers in the dark as there is no supporting record that he informed them about the NIT. Since the tender was settled at the level of the Chief Engineer PWRD it is possible that the Commissioner & Spl. Secretary PWRD Sri MC Boro was not in the picture.

The role of Chief Engineer in keeping supervision over the SE or informing his superior officer informed is not commented upon as he has already passed away.”

10. Thus, from the above quoted finding of the enquiry officer, it is clear that Sri MC Boro did not intentionally mislead the court by making incorrect statement in the affidavit, though he was casual and negligent in

swearing the same. It was expected from a senior officer of the rank of Commissioner and Special Secretary to cross-check the averments made in the affidavit before swearing the same. Be that as it may, Sri MC Boro has retired from service on attaining the age of superannuation and for the lapse on his part he has tendered an unconditional apology. We, therefore, in the fact situation of the case, deem it proper to accept his apology and pardon him for making false and misleading statement in the affidavit. In the result, we set aside the impugned order insofar as it relates to initiation of Suo Motu Criminal Contempt Proceeding against Sri MC Boro.

11. The appeal is allowed to the above extent.

JUDGE

CHIEF JUSTICE

skd