

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

**Itanagar Permanent Bench**

**WP(C) 249(AP)2015**

Arunachal Pradesh Infrastructural Development  
Corporation Limited, Matkim Gumin Building, 2<sup>nd</sup> Floor,  
Near M.L.A. Cottage, Daying Ering Colony, ESS Sector,  
Opposite Information Technology Office, Itanagar,  
Arunachal Pradesh

Represented by its Director  
Sri Sarain Zacharia  
Son of V. L. Zacharia  
Resident of 1301 USR Proxima,  
Plot No. 19, Sector 30 A, Vashi,  
Navi Mumbai-400703.

**.....Petitioner**

Advocates for the Petitioner:

Mr. D. Majumdar  
Mr. T. J. Mahanta  
Mr. P Bhattacharya  
Mr. B. Bora  
Mrs. S. Nag

*-Versus-*

1. The State of Arunachal Pradesh, represented by the Commissioner and Secretary to the Urban and Housing Development Department.
2. The Director, Department of Urban Development and Housing, Itanagar Division, Itanagar, Arunachal Pradesh.
3. Deputy Director, Department of Urban Development and Housing, Itanagar Division, Itanagar, Arunachal Pradesh.

**.....Respondents**

Advocate for the Respondents:

Mr. Pritam Taffo, Standing Counsel(UD & H)

**:::BEFORE:::  
HON'BLE JUSTICE MRS. RUMI KUMARI PHUKAN**

Date of hearing : **13.10.2015**  
Date of Judgment & Order : **16.10.2015**

## **JUDGMENT & ORDER (CAV)**

I have heard Mr. Dilip Majumdar, learned senior, assisted by Mr. B. Bora, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Pritam Taffo, learned standing counsel for all the respondents.

**2.** The petitioner is a semi-government undertaking of Government of Arunachal Pradesh State of Arunachal Pradesh. On 08.02.2010, the Department of Urban Development & Housing, Government of Arunachal Pradesh, the petitioner was awarded the construction of Convention Hall at Itanagar and date of completion of the said project was 24 months from the date of award of the said work. The petitioner has completed 50% of the project work as per agreement dated 12.07.2011 but because of various difficulties faced by the petitioner, they prayed for extension of time, which was allowed by the respondent No. 3, vide his letter dated 08.10.2014 as sought for. However, expressing displeasure about slow progress of work, the Respondent No. 3 wrote a letter for submission of detailed drawings immediately with 1000 sitting capacity on the ground floor of the Convention Hall itself. The petitioner Corporation had taken all possible steps for submission of the detailed drawing. However, on 02.03.2015, a Show-Cause Notice was received by the petitioner as to why an appropriate action under relevant provisions of the Agreement will not be taken against the corporation. The petitioner duly replied to the said Notice on 09.03.2015 and also prayed for releasing of requisite amount for expeditious completion of entire work. However, instead of taking care of the grievances of the petitioner, vide order dated 07.04.2015 issued by the Respondent No. 3, the project was withdrawn from the petitioner.

**3.** The petitioner's contention is that although 50 percent of the project work has been completed, however, in order to accommodate some other contractors in the said project work, the Respondent No. 3 withdrew the said project work. The petitioner submitted a representation on 13.04.2015 requesting for 10 days time to sort out the matter but till date, nothing favourable has been done in this regard. Because of sudden termination of project work, the petitioner has to suffer huge loss as the Corporation had already completed 50 percent of the work as well as invested heavy amount of

money for the rest of the work. It has also been stated by the petitioner that the project work was compelled to commence the project work by 6/7 months' delay as there was some dispute regarding convention site as well as public agitations. The State Respondents must give 2 weeks notice to the petitioner in the event of termination of the contract work which was not the case with the petitioner. Hence, present writ petition has been filed under Article 226 of the Constitution challenging the order of termination under Memo. No. DD/UD&H/ITA/CON-186/2011/11-20 dated 07.04.2015 issued by the Engineer-in-charge-cum-Deputy Director(UD), Urban Development Department, Itanagar.

**4.** The main thrust of argument of the petitioner was that despite extension of time provided by the Respondent No. 3 vide his letter dated 08.10.2014, regarding completion of the project work by 31.07.2015, the Respondent No. 3 has arbitrarily issued the impugned order of termination of contract work, vide order dated 07.04.2015. The termination of the contract work is highly illegal, *mala fide* and discriminatory act on the part of the Respondent No. 3 since the said Respondent No. 3 had directed the petitioner Corporation to submit the detailed drawing in lieu of the earlier drawing in respect of the convention hall only on 02.02.2015. Hence, the petitioner has prayed for quashing of the impugned order dated 07.04.2015 and also for a direction to the respondent authorities to allow the petitioner to complete the entire project work i.e. Construction of Convention Hall at Itanagar, along with a prayer for making payment including the escalation cost.

**5.** State Respondents No. 2 and 3 have filed the counter affidavit in this matter. In the said counter affidavit, it has been contended that despite several meetings held with the petitioner Corporation, the pace of the work, in question, was going very slow and was found to be not satisfactory from any point of view. The site was constantly visited by various dignitaries to see its progress, but everybody was unhappy with the pace. Hence, a Minute of Meeting was held on 07.11.2013 and in the said meeting, the displeasure of everyone was reflected. The petitioner once again re-assured the respondents that they will complete the work by February 2014. Thus, the targets fixed were each time got extended by the petitioner.

**6.** It has been further contended that the said department relentlessly pursued with the petitioner for timely completion of the project but the said work was kept dragging on. Hence, a meeting was held on 9<sup>th</sup> and 10<sup>th</sup> October 2013 in which meeting, it is clearly reflected that the work of the petitioner was progressing very tardily. In sequel to the earlier meeting, a meeting was again held on 20<sup>th</sup> December 2013, wherein it was decided that as per request made by the petitioner, the Department will procure Cement, Sand, Steel, Bricks, etc., directly with verification by both the parties and secondly that the Truss work of the Conventional Hall shall be completed by the last week of January 2014. In subsequent meeting held on 27.12.2013, the petitioner was asked to increase the work force to at least 150 nos. and all the components of project pertaining to Conventional Hall should start in full swing by 2<sup>nd</sup> January 2014. It was reiterated that Truss work should be completed by last week of January 2014. In the said meeting, the petitioner did not bring the detail work of plan of conventional Hall. In the next meeting of 10<sup>th</sup> January 2014, when the same situation occurred then the said Department decided not to release further payment till fulfillment of resolutions by the petitioner. Despite several meetings and resolutions as indicated above, it was found that the petitioner company instead of expediting the work to achieve the target fixed had instead stopped the work completely.

**7.** Again another meeting was convened on 8<sup>th</sup> May 2014 by the Chief Secretary of Arunachal Pradesh, where every stakeholder was called and the representative of the petitioner and also present there. In the said meeting, the petitioner company was directed to resume the work immediately. However, as usual, the petitioner did lip services only. Hence, the respondent No.3, vide letter dated 21.05.2014, directed the petitioner once again to start the work immediately. Failure to evoke any response from the petitioner company, inspite of several meetings, reminders and directions, the respondent No. 2(Chief Engineer cum Director, Urban Development and Housing) issued a Show-Cause Notice dated 19.06.2014 as to why action should not be initiated and contract terminated for not starting the work as agreed. In the meantime, upon request made by the petitioner, the State Respondents decided to extend the completion period of the project upto 31.07.2015 on the assurance of the petitioner to complete the project by the said date.

**8.** In the said counter affidavit, it has also been contended that the idea to do away with the balcony portion of the main hall was mooted by the corporation in its letter no. dated 20.01.2013 stating that on account of the decision made in the meeting held 21.11.2012 to have uniform seating arrangement, the 1000 seating capacity can be accommodated in the ground floor itself. Therefore, the ground floor layout plan accommodating 1000 seats in the round floor itself was submitted to the department vide letter dated 20.01.2013. Later on, the competent authority had given *in principle* approval for doing away with the balcony on condition that the 1000 seats should be accommodated in the ground floor. So, it is denied by the said State Respondents that the corporation had taken all possible steps for submission of detailed drawings. In fact, the gap of two years i.e. from 20.01.2013 to 02.02.2015, should have been a sufficient time for submission of detailed drawings.

**9.** With regard to the Show-Cause Notice, the same was issued after the lapse of 1(one) month from the letter dated 02.02.2015, so allegation of issuance all of a sudden is not true. Furthermore, the petitioner was served with Show-Cause Notices on 11.02.2014 and 19.06.2014, respectively. According to them, the petitioner corporation has taken more than 2 years to submit the detail drawings and as such, the question of working-out the required drawing in hasty and haphazard manner does not arise at all. In the same tune, the State Respondents No. 2 and 3, while referring to General clause Nos. 9, 13, 28 and 33 of the contract agreement, the question of incurring additional expenditure as claimed by the petitioner amounting to Rs. 95,00,000.00 for reworking of drawing from the respondent department, is not at all tenable.

**10.** According to the said State Respondents, the impugned order dated 07.04.2015 was not issued suddenly as alleged in the petition rather it was done after a lapse of more than 1 (one) month of issue of the Show-Cause Notice dated 02.03.2015 that too, after due consideration of the reply dated 09.03.2015. It is also submitted that extension of time given to the petitioner was conditional to the extent that they will perform the other assigned work, in time.

**11.** As regards forfeiture of some of the machines, in question, the same was done as per clause 17 of the "Conditions of Contract" of the agreement. The clause 6(b) of the NIT dated 14.02.2011 clearly ruled out hiring and leasing of tools and plants whereas the Petitioner Corporation and US Reality Private Limited is under the same USR Group, Proxima, 1302, 13<sup>th</sup> Floor, Sector 30-A, Vashi, New Mumbai and the respondent authorities have nothing to do with their internal affairs. As to the allegation of delayed start of the work, in question, the commencement of the work was never delayed for 6 to 7 months although there was a delay of about 3 months. That apart, the question of additional fund for the said work, does not arise as the Engineer-in-Charge was exercising the power granted to him under general clause 33 of the contract agreement.

**12.** In response to the counter affidavit of the State Respondents No. 2 and 3, the petitioner has filed the affidavit-in-reply. The petitioner has contended that although the agreement was executed on 12.07.2011, there were some discrepancies in area as per plan and physical possession and for which the petitioner was asked by the authority to solve the problems with consultation of the departmental authority along with the problem of parking, toilet and change in height of compound wall. In this way 50% time were already over from the target fixed by the authority. As a result, final bill of quantities could not be finalized by 30.09.2012. The petitioner has submitted that they had submitted the proposal to change the scheme but the petitioner never got the approval for the same finally. It has been submitted that the convention hall is a very specialized structure with around 25,000/- square feet with 35 feet height and without columns in between and that too, in a Seismic Zone-VI, it is almost impossible to complete it by July, 2013, in such a hilly area, under the abovementioned circumstances the respondent authority extended the time for completion of the project. Furthermore, from letter dated 03.05.2013 (Annexure-7 of the affidavit-in-opposition) it is clear that till that date no approval was given by the departmental authority regarding sitting plan for convention hall.

**13.** The petitioner has contended that in the Minutes of the Meeting held on 09.12.2013 and 10.12.2013, it was decided to release Rs.1,00,000,00/- (One crore) for

the project of M.L.A Complex but not for construction of the Convention Hall. It has also been contended that as per meeting dated 20.12.2013, it was decided that the department shall directly procure cement, sand steel, bricks, etc., to the project site as the department did not release the fund and the petitioner wanted to carry on the project to complete the same. That apart, as the Urban Development & Housing Development was not registered with the Labour Department, hence, the petitioner corporation did not get licence for use of local labour more than 50 nos.. As such in its meeting held on 08.05.2014 under the chairmanship of the Chief Secretary of Arunachal Pradesh, a decision was taken to the effect that the petitioner corporation should resume the work of convention hall at Itanagar. The followings decisions were taken in the said meeting:

- (i) *The corporation should resume the work.*
- (ii) *The corporation should demand release of fund only after physical progress is achieved.*
- (iii) *The corporation should apply for labour licence from the Department of Labour, Arunachal Pradesh within one week and the department shall issue licence within 7 days.*

**14.** According to the petitioner Corporation, they have no knowledge about the inspection that was allegedly carried out on 13.08.2014. On the other hand, the Corporation has already invested huge amount for the project and now due to non-receipt of fund, the corporation has to suffer financial crisis. In the meeting held on 22.09.2014 it was decided to fix the target of completion of project upto 31.07.2015 and further decided to release Rs. 50,00,000/- to the Corporation. It is to be mentioned here that after due satisfaction about the progress of the work of the corporation the department released Rs. 50,00,000/-(Fifty Lakhs). Vide letter dated 02.02.2015 (Annexure-24 to the affidavit-in-opposition), the authority requested the petitioner Corporation to submit the detailed structural drawings of the project. It is to be mentioned here that the proposed change of drawings required re-working of all drawings such as structural, electrical, drainage, tilling, flooring, finishing, and lifts and as such, it cannot be done within a very short period. But, the authorities concerned after about one month, issued show cause notice dated 02.03.2015 for termination of

work and subsequently, very arbitrarily, issued the impugned order of termination dated 07.04.2015.

**15.** The petitioner corporation has contended that it has not received approval from the authority regarding structural drawings, as a result of which, it has to face difficulties because as per clause 6 of the agreement dated 12.07.2011, approval shall be obtained from the department before execution. Moreover, as per clause 11 of the agreement dated 12.07.2011, the work shall be executed strictly as detailed design and architectural/structural drawings prepared by the corporation to be approved by the corporation. So far as change of structural drawings is required, reworking of all the agencies also required huge money and time. The petitioner corporation appointed various agencies from Kolkata, Mumbai, Delhi, Gujarat to prepare the plan. Clause 28 of the agreement dated 12.07.2011 reads as "No payment for escalation for price due to market factors will be considered". In the present case, escalation claim is not due to market factor, it is due to price escalation for delay in execution as the department was in the process to work-out the details of price variation amount. On the other hand, the Chief Engineer who was in Charge of the project never objected the execution of the items. As per clause 38.1 of the agreement dated 12.07.2011, two weeks notice is required in the event of termination of contract but in the present case the departmental authority vide notice dated 02.03.2015 has given only 7 days time to file show cause reply to this deponent. It is a clear violation of terms and condition of the agreement dated 12.07.2015 and principle of natural justice.

**16.** The petitioner Corporation has submitted that the Arunachal Pradesh Infrastructural Development Corporation Limited and US Reality Private Limited are two different companies with different objectives and different shareholders. The respondent authority forfeited the articles which do not belong to the petitioner corporation but belong to US Reality Private Limited. The petitioner has categorically contended that till 07.04.2015, the respondent authority has not issued final approval regarding change of structural plan and as such, the petitioner corporation cannot carry on the construction work. Further, the same was barred as per clause-6 of the agreement dated 12.07.2012.

**17.** It is the categorical submission of the petitioner Corporation that due to change of structural design of the project and non-receipt of additional fund as well as non-approval of changed design by the authority, the petitioner corporation was unable to complete the project within time. It has been very forcefully pleaded by the petitioner that the petitioner is very much interested and willing to complete the construction of convention hall at Itanagar but the circumstances as mentioned above and which is beyond its control, has rendered the petitioner helpless to complete the said project within time and therefore, it has been prayed by the petitioner that this Court may be pleased to set aside the impugned order dated 07.04.2015 and direct the respondent authority to allow the petitioner to complete the project.

**18.** Thus, we found there is much deliberation from both sides on the matter at hand that according to the learned counsel for the petitioner, due to various reasons like location of place at hilly area, procurement of proper labour by crossing the hurdle of obtaining license for collecting labour to engage in such hilly areas that changing structure of the building for arranging seating accommodation of 1000 seats in the ground floor consequent upon different requirement to work-out on the subject and while the project is itself is a very specialized one is a seismic zone-VI, and also due to late approval for such structural change, etc., etc., as has been mentioned in the petition, the petitioner being unable to complete the construction work in terms of agreement has prayed for extension of time, and which was virtually allowed by the respondent authorities vide letter dated 08.10.2014. But subsequently, the cancellation of the work of the petitioner without any cogent reasons and without giving requisite time to reply to such order, is stated to be bad in law and has been challenged under this writ jurisdiction.

**19.** The contention of the learned counsel for the respondent is also based upon the fact that the petitioner deliberately failed to execute the work under the contract agreement and as their effort to get the work done in time is failed, in spite of repeated reminders, to the petitioner, contract was liable to be terminated and accordingly, it has been terminated. The learned counsel for the respondent has also urged that the power

and scope of judicial review by this writ jurisdiction is very limited and Court cannot interfere into such contractual matter as the State Government has exclusive domain over the subject-matter. In this context, the learned counsel for the respondent, has referred to the case law reported in (2000) 6 SCC 293 ***Kerala State Electricity Board & anr. V. Kurien E. Kalathil*** and it has been submitted that contract between the parties is in the realm of private law and it is not a statutory contract and disputes relating to the interpretation of terms and conditions of the contract could not have been agitated in a petition under Article 226 of the Constitution of India.

**20.** The case of ***Tata Cellular v. Union of India*** reported in ***(1994) 6 SCC 651*** has also been relied upon by the learned counsel for the respondent wherein it has been held that principle of judicial review applied to exercise of contractual power by the Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of power under judicial review. The government is guardian of finances of the State and it is expected to protect the financial interest of the State. The Government right to choose the best person for best quotation cannot be considered as an arbitrary power.

**21.** On the other hand, according to the petitioner, for the conduct of the respondent authorities, the petitioner was not in a position to complete the work even though some sort of delay can be attributed to him but he is not solely responsible for non-completion of the work. It is the respondent authority who has themselves approved for the structural change of the construction at the later stage of construction which has resulted in so many other miscellaneous works to be carried out by the petitioner. But due to so many sensitive issues as has been narrated in the petition, such an ideal project for the whole State of Arunachal Pradesh, cannot be carried out hastily by the petitioner. Leaving apart all such allegations and counter-allegations between the parties, let us stick to the vital aspect of the case, which in my view has created all the troubles between the parties. The petitioner, herein, as has been prayed for, was allowed by the respondent authorities, extension of time, to complete the work till July, 2015. During subsistence of such communication granting extension of time, the same

respondent authorities subsequently issued the show cause notice, that too, without giving proper time of two weeks as per the terms and conditions of the agreement, has terminated the contract work so assigned to the petitioner, and that aspect of the matter deserved to be appreciated by this judicial review. The petitioner who was under the assurance of the respondent authorities that time has been granted upto July, 2015, then he has ample time to complete the work. Then sudden termination of the work before July, 2015, certainly has caused prejudice to the petitioner as because he has already completed more than 50% of work by investing huge amount of money and the impugned termination order bears no proper reason according to the learned counsel for the petitioner. We also found no averment in the letter whereby extension of time has been given that it was granted on certain conditions only, so such submission of respondent side cannot be accepted.

**22.** In the case of *Lanco Construction Ltd. V. State of Andhra Pradesh* reported in *(2008) 46 APST J 174*, while dealing with similar situations, following observation has been made:

***"There is no dispute about the parameters of interference that can be undertaken by the process of judicial review under Article 226 of the Constitution of India in respect of contractual matters. I need not to refer to catena of decisions on this respect which were dealt with by the Apex Court, time and again, and this Court, on number of occasions. Suffice it to say the power of judicial review is not directed against the decision taken by the administrative authority but it is only against the process adopted by the authorities in arriving at a decision. The decision became immaterial. But if the process is found to be illegal or contrary to the principles settled by the Apex Court, it is always open to the Court to interfere and issue appropriate directions."***

**23.** Of course, if the said power is exercised for any collateral purpose, the exercise of that power to be struck down. Judicial quest in administrative matters has been find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy, thus, they are not essentially justiciable and need to remedy any unfairness. Such unfairness is set at right by judicial review. The Apex Court recorded the finding as to the limits within which the court has to confine as below:

1. Whether decision making authority exceeded its power?
2. Committed an error of law
3. Committed breach of rules of natural justice
4. Reached a decision which no reasonable tribunal would have received.
5. Abused its powers.

**24.** There is no such enabling provision in the agreement that the respondent authorities can forfeit the properties of the petitioner and the petitioner can be black-listed for his inability to complete the work. Further, all blame has been attributed to the petitioner for the delay for constructing 1000 seating capacity in the main hall but the respondent authorities has not explained as to why they have approved the same again and why they took time for giving formal approval to the petitioner to go ahead with the said construction. The petitioner obviously cannot adhere to, for such change in the construction work unless he gets formal approval. It is evident from the show cause notice issued to the petitioner that till March, 2015, no formal approval was given to the petitioner. Similarly, the respondent authorities has not responded to the reply to the said show cause notice wherein the petitioner has explained that as they are gearing up the work of Convention Hall to complete the project but as the UD Department has made significant design of convention hall by removing the balcony and lift so as the whole structural building has to be reworked from inception at such a huge cost and there was also waiting for confirmation of expenditure of Rs.95 lakhs. It has also been explained that acoustic and air conditioning etc., cannot be done in a hasty and haphazard manner as the site is located at seismic Zone-V and three different agencies are also involved in the work. The said termination order does not reflect that the respondent authorities has given any consideration to the ground assigned in the show cause reply by the petitioner and simply stated that it was not found to the satisfaction of the respondent authorities.

**25.** There is sufficient force in the case of the petitioner that he has been denied to avail the proper time which was already given to him to complete the work and the respondent authorities have totally failed to submit anything that under what circumstances they have reverted back to another course of action of termination during subsistence of such extension order. The conduct of the respondent authorities suffers

from arbitrariness as well as illegality and the decision so arrived at by an unfair means and procedure. Gauged from whole aspect of the matter, it can be held that the petitioner has been ousted from the contract work only on the whims and caprice of the respondent authorities which needs to be interfered with by this judicial review.

**26.** In view of the above, the impugned order dated 07.04.2015 is hereby quashed and set aside with a direction to the respondent authorities to allow the petitioner to complete the work within 4(four) months from the date of this order, in tune to the concerned respondent's own letter by which the petitioner still had 4(four) months time to execute the said work, till abrupt termination of the work. It is also expected that the petitioner Corporation will make sincere, earnest and concrete endeavour to complete the project, in question, within the time stipulated by the Court.

**27.** Though 4(four) months time has been provided by the Court, the authorities concerned shall always be at liberty to grant some more time, as deemed fit and proper, taking into consideration, the prestigious project for the benefit of entire State, by avoiding all internal conflicts between the parties.

**28.** With the above directions and observations, this writ petition stands disposed of. There shall be no order as to costs.

**JUDGE**

*Bikashi*