

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

WP(C) NO. 145 (AP) OF 2015

WITH

IA (WP) 81 (AP) 2015

PETITIONER:

M/S. M. L. Enterprises,
P.O & P.S - Aalo,
West Siang District, Arunachal Pradesh,
Through its constituted Attorney,
Shri Nyakar Rike,
Resident of Kombo-Pomte,
P.O. & P.S. - Aalo,
West Siang District, Arunachal Pradesh.

By Advocates :

Mr. D. Panging,
Mr. D. Soki,
Mr. V. Jamoh,
Mr. D. Tamuk,
Mr. E. Perme,
Mr. M. Doji,
Mr. B. Lingu.

RESPONDENTS :

1. The State of Arunachal Pradesh,
Represented by the Chief Secretary,
Government of Arunachal Pradesh, Itanagar.
2. The Chief Secretary,
Government of Arunachal Pradesh, Itanagar.

3. The Commissioner / Secretary,
Public Works Department,
Government of Arunachal Pradesh, Itanagar.
4. The Chief Engineer,
Central Zone (CZ),
Public Works Department,
Government of Arunachal Pradesh, Itanagar.
5. The Superintending Engineer,
Public Works Circle, Aalo,
Government of Arunachal Pradesh.
6. The Executive Engineer,
Public Works Division,
West Siang District, Aalo.
7. Shri Dummar Bagra, Executive Engineer,
Public Works Division, Aalo Division,
West Siang District, Aalo.
8. Shri Marto Lollen,
Resident of Tarsu Mobuk,
Kombo, P.O. - Aalo,
West Siang District, Aalo,
Arunachal Pradesh - 791 001.
9. Shri Moji Lollen,
Resident of Yeggo Village, Aalo,
P.O. - Aalo, West Siang District,
Arunachal Pradesh - 791 001.

By Advocate:

Mr. K. Ete, Additional Advocate General,
Government of Arunachal Pradesh and
Ms. Laxmi Hage, Government Advocate,
Arunachal Pradesh.

For Respondent Nos. 1 to 6.

Mr. T. Pertin,
Mr. K. Saxena,
Mr. U. Bori,
Mr. Y. Riar,
Mr. R. L. Thungon.

For Respondent No. 9.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

DATE OF JUDGMENT AND ORDER : 21st OF APRIL, 2017.

JUDGMENT AND ORDER

Heard Mr. Dicky Panging, learned counsel, appearing for the petitioner. Also heard Mr. Kardak Ete, learned Additional Advocate General, assisted by Ms. Laxmi Hage, learned Government Advocate for the State respondent Nos. 1 to 6 and Mr. Tony Pertin, learned counsel for the private respondent No. 9.

2] The petitioner herein is a registered firm and listed as Class-I Contractor with the Arunachal Pradesh Public Works Department (APPWD, in short), having its registered office at Aalo, West Siang District, Arunachal Pradesh and is represented by its constituted attorney Shri Nykar Rike, resident of Kombo Papak Village, Aalo, who is also representing the petitioner firm in the case in hand.

3] In the present case, the petitioner had challenged the illegal and arbitrary action of the respondent authorities in allowing the execution of the work "*improvement and construction of the road from Pakam-Tinali to Jirdan Tri-Junction and Pakam-II PMGSY (Prime Minister's Gramya Sadak Yojana) Road to Tyemro area at Aalo*" by the private respondent Nos. 8 and 9, without floating any tender, hereby denying other eligible firms to participate in the tender process, without any technical specifications as well as without obtaining any administrative approval and expenditure sanction, in order to misappropriate public money.

4] As the roads in the vicinity of Aalo Township including the road from Pakam-Tinali to Kombo Village were in very deplorable state, a concept paper was forwarded by the Executive Engineer, Aalo, Public Works Division to the Department of Planning, Government of Arunachal Pradesh for necessary

sanction from the Government. Accordingly, the State Government incorporated the said work of *"improvement and construction of the road from Pakam-Tinali to Jirdan Tri-Junction and Pakam-II PMGSY Road to Tyemro area at Aalo"* in the Annual Operating Plan:2014-15, under the Special Plan Assistance Schemes (SPA, in short).

5] It is stated that the Government of India is providing Special Plan Assistance for the special projects to the special category States of the Country that includes the seven North Eastern States, Sikkim, Jammu & Kashmir, Himachal Pradesh and Uttarakhand as these States have low resource base and unable to mobilise resources for their developmental needs and as per the said Scheme of Assistance, i.e. the SPA, the Central Government treats 90% of the amount borrowed by those States as grants and 10% as loans.

6] It is also stated that the Adviser (NE), Planning Commission on 11.10.2010, had issued necessary guidelines with regard to such SPA, that were duly received by the Secretary (Planning), Government of Arunachal Pradesh on 25.10.2010, wherein it was specifically provided that there shall be mandatory tendering for all SPA projects for transparency and competitive bidding.

7] The petitioner stated that from the information, which is operative in the official website of the Department of Planning, Government of Arunachal Pradesh that an amount of Rs. 425.70 Crores was released by the Ministry of Finance, Government of India as 90% Central share of SPA against 126 nos. of projects under SPA as submitted by the State Government during the year 2014-15 and that the State Government, in the Department of Planning, vide order dated 30.03.2015 released an amount of Rs. 473.00 Crores (including 90% Central share of Rs. 425.70 Crores and 10% mandatory State share of Rs. 47.30 Crores) for those 126 nos. of projects of the respective departments clarifying that tendering for all SPA projects sanctioned for the year 2014-15 is mandatory for transparency and competitive bidding as per the guidelines of the Government of India. It is stated that amongst those 126 projects, an amount of Rs. 4 Crores was released for the said work of *"improvement and*

construction of the road from Pakam-Tinali to Jirdan Tri-Junction and Pakam-II PMGSY Road to Tyemro area at Aalo".

8] As the Notice Inviting Tender (NIT, in short) is a mandatory requirement as per the guidelines of the Government of India for the aforesaid work of improvement and construction of the road from Pakam-Tinali to Jirdan Tri-Junction, the petitioner, as Class-I registered contractor, was expecting that the concerned Department of PWD of the state would issue NIT for the said work, but to his surprise, as stated by the petitioner that without any administrative approval of the department concerned, without any expenditure sanction accorded by the concerned authority, without placing the fund under the disposal of the executing Department of the State in terms of Rule 129 of General Financial Rules, 2005 as contained in the Central Public Works Department (CPWD, in short), as adopted by the Government of Arunachal Pradesh and without issuing any NIT, the Official respondents issued the said work of improvement and construction of the road, in question, to the respondent nos. 8 and 9. The petitioner also placed before the Court that as per provisions of CPWD Manual estimate containing that the dated specifications for obtaining technical sanction has to be sent to the Chief Engineer, if the amount of the work is more than Rs. 2.5 Crores and that Section 2.1 of the CPWD manual relates to Pre-requisites for execution of works which provides that 4 (four) main stages in the execution of work, which are – (i) Administrative approval, (ii) Expenditure sanction, (iii) Technical sanction and (iv) Availability of funds. It is placed before the Court that without there being any technical sanction and specifications for the work, before any administrative approval and expenditure sanction of the competent authority, without inviting any tender, the respondent authorities allowed the work of improvement and construction of the road, in question, to the present respondent Nos. 8 and 9, in violation of the provisions established under the law, depriving the genuine bidders, in anticipation, like the petitioner. Therefore, the petitioner, amongst others, prayed for issuance of writs and/or directions to the respondent authorities – (i) to take necessary steps to stop the

execution of the work "*improvement and construction of the road from Pakam-Tinali to Jirdan Tri-Junction and Pakam-II PMGSY Road to Tyemro area at Aalo*" being executed by the respondent Nos. 8 & 9, (ii) to issue necessary direction to the respondent authorities for issuance of Notice Inviting Tender for the said work under the SPA as per the guidelines of the Government of India and (iii) to issue direction for making an enquiry/investigation for allotment of such work to the respondent Nos. 8 & 9, by misappropriating public money.

9] The Court, while issuing notice to the respondents in this case, vide order dated 21.04.2015, in the interest of justice, directed the respondents to immediately stop the execution of the aforesaid work regarding the improvement and construction of the road, in question, involved in the case, being carried out by the respondent Nos. 8 & 9; which is still in force.

10] The State respondent though received notice of the case, did not file any affidavit-in-opposition in the matter, countering the claims of the petitioner, but raised preliminary objection regarding maintainability of the writ petition itself.

11] Though notice of the case has been duly served on the private respondent Nos. 8 & 9, but the respondent No.8 did not appear in the matter. However, respondent No. 9 entered their appearance in the case, filed the Interlocutory Application (IA, in short) raising preliminary objection with regard to maintainability of the writ petition preferred by the petitioner and for vacation of the interim order of stay granted by the Court on 21.04.2015.

12] In the said IA, the respondent No. 9, as an applicant, submitted that as the road, from *Pakam-Tinali to Jirdan Tri-Junction and Pakam-II PMGSY Road to Tyemro area* having population of about 7000, being in a dilapidated condition, causing difficulty to the local residents, the affected villages under the banner of All Kombo Welfare & Development Society (AKWDS) approached the local MLA seeking immediate repair and maintenance of the said road to which, the said MLA informed that funds for the said purpose is not available, but advised the public to choose a competent contractor, who could execute

the work in advance for public welfare stating that in the meantime necessary funds would be arranged. However, as no such contractor volunteered, in a meeting of the said AKWDS, held on 04.10.2014, the Society resolved to leave the decision of choosing the contractor on the local MLA and also resolved that that the villagers would not, in any manner, stop the tendering process, if the fund is allocated. It stated by the applicant respondent No. 9, that after said decision of the said Society, at his own cost, at the request of the local MLA he carried out the widening, maintenance and reconstruction of the road, in question, at his own cost, for larger public interest.

13] Mr. Tony Pertin, learned counsel for the respondent No. 9/the applicant of the said IA submitted by that as the petitioner in the capacity of a attorney holder and on the strength of the Power of Attorney has filed the present petition on behalf of M/S. M. L. Enterprises, the same is not maintainable, as this Court in the case of *M/S. Kaushal Sharma -Vs- State of Arunachal Pradesh and others [WP(C) No. 253(AP)/2015]* has held that power of attorney holder has no *locus standi* to file writ petition. He has also placed a copy of the Judgment & order dated 21.08.2015, passed by another single Bench of this Court in said *WP(C) No. 253(AP)/2015*. The decision in *M/S. Kaushal Sharma*, (supra), has been rendered following the decision of the Full Bench of the Hon'ble Supreme Court in the case of *Charanjit Lal Choudhury - Vs- Union of India and others*, reported in *AIR 1951 SC 41*.

14] Mr. Kardak Ete, learned Additional Advocate General, appearing for the State respondents also submitted that since the present writ petition has been filed by an attorney holder, whose own rights have not been infringed, not being an aggrieved party with the claims made in the writ petition, said attorney holder does not have any *locus standi* to file the present writ petition and as such the same being not maintainable, should be dismissed.

15] Mr. Ete, placed the decision dated 07.05.2015, passed by another single Bench of this Court in *WP(C) No. 103(AP)/2015 [M/S. Lokam Brothers & 2 others -Vs- The State of Arunachal Pradesh and others]*, which was upheld by

the Division Bench on 10.05.2015 in *Writ Appeal No. 10(AP) 2015 [M/S. Lokam Brothers & 2 others -Vs- The State of Arunachal Pradesh and 6 others]*. Mr. Ete has also placed a decision dated 21.08.2015 of another Single Bench in the case of *M/S. K.K.K.K. Enterprises -Vs- The State of Arunachal Pradesh and 7 others [WP(C) No. 223(AP)/2015]* to support his argument that attorney holder has no right to prefer any writ petition on behalf of the principal.

16] From the perusal of Judgment passed in the case of *M/S. Kaushal Sharma (supra)*, cited by Mr. Tony Pertin, learned counsel for the respondent No. 9/the applicant of IA (WP) 81(AP) 2015, it is seen that the registration number of the Contractor was valid only up to 31.03.2015, the Notice Inviting Tender involved in said case was issued on 24.03.2015, Technical Bid was opened on 18.06.2015. M/S. Kaushal Sharma's Technical bid was rejected on 18.06.2015 itself, he executed the Power of Attorney on behalf of Mr. Kaya Sonam on 22.06.2015 in a stamp paper of Rs. 10/- at Tinsukia, Assam, said Mr. Kaya Sonam never participated during the said NIT proceeding nor produced any Power of Attorney on behalf of said M/S. Kaushal Sharma during the proceeding of said NIT, but filed the writ petition being WP(C) No. 253(AP)/2015, on behalf of said M/S. Kaushal Sharma, in the Itanagar Permanent Bench of this Court on 22.06.2015 itself, the day when said power of attorney was executed by M/S. Kaushal Sharma at Tinsukia and as the Court found that the validity of the Firm M/S. Kaushal Sharma was only up to 31.03.2015 and nothing was placed before the Court that it was extended after 31.03.2015, as such considered that said power of attorney on behalf of Mr. Kaya Sonam dated 22.06.2015 itself was doubtful therefore, without entering into the merit of the case, by the Judgment & Order dated 21.08.2015, dismissed the said WP(C) No. 253(AP)/2015, filed Mr. Kaya Sonam as attorney holder on behalf of the unsuccessful bidder M/S. Kaushal Sharma.

17] From the perusal of the Judgment & Order dated 15.05.2015, passed by Division Bench in WA No. 10 (AP) 2015 and the Judgment & Order dated 07.05.2015, passed by Single Bench in WP(C) No. 103 (AP) 2015 in the case of *M/S. Lokam Brothers & 2 others -Vs- The State of Arunachal Pradesh and 6*

others cited by Mr. K. Ete, learned Additional Advocate General, it can be seen that the attorney holders just possessed undated authorization letters to represent the writ petitioners and no document was placed before the Court to show that the attorney holders had any such authority to act or to institute legal proceeding on behalf of the petitioners, the respective farms and accordingly the finding of the learned Single Judge was that writ petition filed by unauthorised person cannot be entertained. However, the Writ Appellate Court left open the issue with regard to any future course of action that the writ appellant may initiate, with the rider, that in case of any writ proceedings instituted by the writ appellants, involved in the case, the same shall be subject to the legality, veracity and authenticity of the Power of Attorney, referred in the said appeal.

18] From the perusal of Order dated 21.08.2015, passed in the case of *M/S. K.K.K.K. Enterprises (supra) [WP(C) No. 223 (AP) 2015]*, cited by Mr. K. Ete, learned Additional Advocate General, it is seen that the person, who filed the said writ petition, was having only an authorization letter on behalf of sole proprietor of the Farm, in question, which was neither a registered document nor authenticated by notary or any competent authority, therefore, the respondents objected in entertaining said writ petition having no *locus-standi* to file the same on the basis of such authorization letter.

19] Mr. Panging, learned counsel for the petitioner on the other hand relying on the judgment of the Hon'ble Andhra High Court reported in (1975) *ILLJ 470 AP [The Management of Singareni -Vs- The Industrial Tribunal and others]*, submitted that a proceeding under Article 226 of the Constitution of India is a Civil proceeding and the jurisdiction of the High Court on that behalf is original, distinguished from appellate or revisional jurisdiction and the proceeding is summary in nature, therefore, provisions of Civil procedure Code are no doubt applicable to such proceeding, only as far as they are consistent with the nature and scope of the proceedings and general, principles guiding such writs. Mr. Panging, therefore, submits that the writ petitioner farm has

been rightly represented by a duly constituent Attorney on the basis of a Power of Attorney, executed by the concerned executant.

20] Mr. Panging, relying on the judgment of the Hon'ble Manipur High Court reported in *Manu/MN/0139/2014 [Ngairangbam Somorendro Singh -Vs- The State of Manipur]*, submitted that the present writ petition is maintainable in its present form as the same has been filed by the Attorney holder on behalf of the Petitioner Farm on the basis of Power of Attorney, executed by the concerned Executant on behalf of the petitioner farm, in question, and not by the Power of Attorney holder in his individual capacity and further the relevant Power of Attorney executed by the Executant concerned on behalf of the petitioner farm being an authenticated one, is not under challenge.

21] From the Annexure-2, appended to the writ petition it is seen that Shri Gemar Lollen, the Proprietor of M/S. M. L. Enterprises, Aalo on 04.04.2015 executed a "Special Power of Attorney" before the Executive Magistrate, West Siang District, Aalo, Arunachal Pradesh, nominating, constituting, appointing, empowering and authorizing Shri Nyakar Rike of Kombo Pomte, West Siang District, to be his lawful Attorney on behalf of his said farm M/S. M. L. Enterprises for execution of all kinds of contract works in West Siang District, Aalo, clarifying amongst others that the said attorney (i) shall sign and verify plaints, written statement, petitions of claims and objections, memorandum of appeal, petitions, applications of all kinds and shall file them in any such Court or office and (ii) shall file any civil suits, criminal suits in the Court pertaining to any contract work of West Siang District. The said instrument was duly registered and numbered as 517 dated 07.04.2015 in the Court of the Executive Magistrate, West Siang District, Aalo. It is also seen that the present writ petition has been filed by the said firm M/S. M. L. Enterprises, represented by its constituted Attorney, Shri Nyakar Rike as reflected from the cause title of the writ petition.

22] "Power-of-Attorney" as defined in Section 1A of the Powers of Attorney Act, 1882, includes any instruments empowering a specified person to act for

and in the name of the person executing it. Section 2 of said 1882 Act relates to "Execution under Power-of-Attorney" and it provides that – "the donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donor of the power in the name, and with the signature and seal, of the donor thereof. The said section applies to Powers-of-Attorney created by instruments executed either before or after the said Act came into force.

23] Chapter X of the Indian Contract Act, 1872 consisting of Sections 182 to 238 relates to Agency, out of which Sections 182 to 189 relate to *Appointment and authority of agents*, Sections 190 to 195 relate to *Sub-Agents*, Sections 196 to 200 relate to *Ratification*, Sections 201 to 210 relate to *Revocation of Authority*, Sections 211 to 221 relate to *Agent's duty Principal*, Sections 222 to 225 relate to *Principal's duty Agent* and Sections 226 to 238 relate to *Effect of agency on contracts with third persons*.

24] Order III of the Code of Civil Procedure relates to Recognised Agents and Pleaders and Rule 1 of Order III relates to appearance etc. may be in person, by recognised agent or by pleader. Order III, Rule 2 of the CPC relates to Recognised Agents and it stipulates that – The recognised agents of parties by whom such appearances, applications and acts may be made or done are – (a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties; (b)

25] In the case of *Janki Vashdeo Bhojwani -Vs- Indusind Bank Ltd.*, reported in (2005) 2 SCC 217, the Hon'ble Supreme Court have held that –

"13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of

such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

26] Order VI Rule 15 of CPC stipulates verification of pleadings and going through the said provision. It can be seen that under Sub-Rule (1) every pleading needs to be verified at the foot by the party pleading or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts whereas, under Sub-Rule (2) of the said Rule, the person verifying such pleading requires to specify by referring the numbers to the paragraphs of the pleading that he verifies, which is/are his own knowledge and those paragraphs of the pleading that he verifies upon the information received and believes to be true.

27] Order XIX of the Code of Civil Procedure relates to Affidavits and Rule 3 of said Order XIX specifies that affidavits shall be confined to such facts as the deponent is able, of his own knowledge, to prove, except an interlocutory application, statements of which, on his belief, may be admitted; provided that the grounds thereof are stated.

28] Chapter IV, Rule 21 to 29 of the Gauhati High Court Rules relates to Affidavits and Rule 25 of said Chapter stipulates that – every person, other than plaintiff or defendant in a suit in which the application is made, making any affidavit, shall describe in such a manner as will serve to identify him clearly, that is to say by the statement of his full name, the name of his father, his profession or trade and the place of his residence.

29] A three Judges Bench of the Hon'ble Supreme Court in the case of *S&raj Lamp & Industries (P) Ltd. (2) -Vs- State of Haryana*, reported in (2012) 1 SCC 656 have held that –

"A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of

Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee."

30] In the case of *A.C. Narayanan -Vs- State of Maharashtra, (2014) 11 SCC 790*, a proceeding under Section 138 of the Negotiable Instrument Act, 1881, a three judges Bench of the Hon'ble Supreme Court have held that –

"The power-of-attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power-of-attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.

The power-of-attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the NI Act. An exception to the above is when the power-of-attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the power-of-attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous.

We are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed amongst others by –

(iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor.

We have already clarified to the extent that the attorney holder can sign and file a complaint on behalf of the complainant payee. However, whether the power-of-attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.

Filing of complaint petition under Section 138 of the NI Act through power of attorney is perfectly legal and competent.

The power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions."

31] In the case of *Church of Christ Charitable Trust & Educational Charitable Society -Vs- Ponniamman Educational Trust*, reported in (2012) 8 SCC 706 the Hon'ble Supreme Court have held that –

"..... from the date the power of attorney is executed by the principal in favour of the agent and by virtue of the terms, the agent derives a right to use his name and all acts, deeds and things done by him are subject to the limitations contained in the said deed. It is further clear that the power-of-attorney holder executes a deed of conveyance in exercise of the power granted under it and conveys title on behalf of the grantor."

32] The Hon'ble Supreme Court in the case of *State of Rajasthan -Vs- Basant Nahata*, reported in (2005) 12 SCC 77, have observed that –

"13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience."

33] The Hon'ble Supreme Court in the case of *Basant Nahata* (supra), have held that –

"52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

34] From the above it is seen that the power of attorney is a creation of an agency whereby the grantor/executant/donor/principal authorises and/or

empowers the grantee/donee/attorney holder to carry out and execute certain works, specified in the said instrument, on behalf of the said grantor/executant and when such works as specified are executed by the said grantee/attorney holder, the same is binding on the grantor/executant as if done by him. Therefore, said grantee/donee/attorney holder on the basis of said power of attorney does not act for his personal capacity, for his own benefit, but executes the work on behalf of the executant of the said instrument as specified in it, representing the said the grantor/executant/donor/principal.

35] The case of *Charanjit Lal Chowdhury -Vs- Union of India*, reported in *AIR 1951 SC 41*, relates to a shareholder holding 80 preference shares and 3 ordinary shares of Sholapur Spinning and Weaving Company Limited that stand in the name of the Bank of Baroda to whom he said to have been pledged and as those preference shares are not registered in the name of the petitioner, he cannot assert any right as holder of those shares; therefore the petitioner's interest in the said company was taken as limited to only one fully paid-up ordinary share. The Central Government promulgated Ordinance 2 of 1950 delegating all its powers to the Government of Bombay regarding the said weaving company and the authority accordingly dismissed managing agents of the said company, the Directors holding office at the time, automatically vacated their office, the Government was authorised to nominate directors, the rights of the shareholders of this company were curtailed and that it was made unlawful for them to nominate or appoint any Director, no resolution passed by them could be given effect to without the sanction of the Government and no proceeding for winding up could be taken by them without such sanction, and power was given to the Government to further modify the provisions of the Indian Companies Act in its application to the said company. Thereupon Suit No. 438 of 1950 was filed in the High Court of Bombay by one Dwarkadas Shrinivas against the new directors challenging the validity of the said Ordinance and the right of the new directors to make the call. The High Court held the Ordinance as valid and dismissed the suit against which Appeal No. 48 of 1950 was preferred, which was dismissed by a Division Bench on August 29, 1950.

During pendency of said appeal on April 7, 1950, the Ordinance was replaced by Act 28 of 1950. The Act substantially reproduced the provisions of the Ordinance where only the preambles to the Ordinance were omitted and in May 1950, said petitioner preferred the said matter. The contention of the petitioner was that the Ordinance and the Act have infringed his fundamental right to property as a shareholder in the said company. The Hon'ble Court found that the Ordinance or the Act has not deprived the shareholder of his share itself and that the share still belongs to the shareholder for which he is still entitled to the dividend that may be declared and that he can deal with or dispose of the share as he pleases. The Court held that if the deprivation of property is brought about by means other than acquisition or taking possession of it, no compensation is required, provided that such deprivation is by authority of law. In the said case, the Court stated that although the shareholder has been deprived of certain rights, such deprivation has been by authority of law passed by a competent legislative authority and the said deprivation having been brought about otherwise than by acquisition or taking possession of such rights, no question of compensation can arise, therefore, there can be no question of infraction of fundamental rights under Article 31(2); therefore, clarified that so far as the shareholder is concerned, there has been no infringement of his fundamental rights under Article 19(1)(f) or Article 31, and the shareholder cannot question the constitutionality of the Ordinance or the Act on this ground.

36] In the aforesaid background the Constitution Bench of the Hon'ble Supreme Court (a five Judges Bench) in the said case of *Charanjit Lal Chowdhary (supra)* have held that the legal rights, which can be enforced in the exercise of writ jurisdiction must ordinarily be the rights of the petitioner himself, who complains of the infraction of such rights and approaches the Court for relief.

37] In the case of *Calcutta Gas Co. -Vs- State of West Bengal*, reported in *AIR 1962 SC 1044*, the *locus standi* of the appellant to file petition under Article 226 of the Constitution was, in question, since the said appellant was only

managing the industry and it had no proprietary right therein. Another Constitution Bench of the Hon'ble Supreme Court (comprising a Bench of five Judges) in the said case of *Calcutta Gas Co* (supra), considering the decision of the said Court in the case of *State of Orissa -Vs- Madan Gopal Rungta*, reported in 1952 SCR 28, wherein it was held that "the existence of the right is the foundation of the exercise of jurisdiction of the court under Article 226 of the Constitution" and in the case of *Chiranjit Lal Chowdhuri* (supra), where it was held that "the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the court for relief", came to the conclusion that –

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder. The article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

38] In the said case of *Calcutta Gas Co* (supra) there was an agreement between the Oriental Gas Company and the appellant/writ petitioner company as per the same, the appellant had the right to manage the Oriental Gas Company for a period of 20 years and to receive remuneration for the same. Hon'ble Apex Court found that because of the impugned Act under challenge in the said case, the appellant company was deprived of certain legal rights it possessed under the said agreement, more particularly, the right to receive remuneration for managing the Oriental Gas Company for a period of five years. The Hon'ble Apex Court found that there was certainly a legal right accruing to the appellant under the agreement and that was abridged, if not destroyed, by the impugned Act; therefore, it is, impossible to say that the legal right of the appellant was not infringed by the provisions of the impugned Act. Since in the circumstances, as the appellant's personal right to manage the Company and to receive remuneration therefor had been infringed by the

provisions of the statute, the Hon'ble Court came to the conclusion that the said appellant has the *locus standi* to file the petition under Article 226 of the Constitution.

39] It is already observed that the power of attorney holder is just like an agent, who performs and executes the work specified in the instrument/ deed in the name of and on behalf of the executant, but does not carry out the work for his own gain in his personal capacity.

40] From the above it is seen that there is no such bar to a person to seek relief for enforcement of his legal right by way of a writ petition under Article 226 or Article 227 of the Constitution through a power of attorney holder as it is held that the said article does not describe the classes of persons entitled to apply thereunder, except legally enforceable right. However, as settled, such a proceeding under Article 226 and 227 of the Constitution is not permissible to a petitioner, who moves such a proceeding, not supporting a case personal to him or her nor he or she authorised to move such a proceeding as an agent of the person, who is directly affected. Whenever a power of attorney holder in the name of, and acting on behalf of the executants, prefers a writ petition under Article 226 of the Constitution, without claiming and supporting any right personal to him, in such circumstances, such a writ petition instituted under Article 226 of the Constitution cannot be termed or said to be instituted by the concerned power of attorney holder independently on his personal capacity for himself; but the said attorney holder acts as an agent/grantee/donee for and on behalf of the grantor/executant/donor/principal in whose name such a writ proceeding is instituted before the Court.

41] From the discussion made above it can also be seen that the judgments & orders cited by the respondents are not applicable in the present case.

42] For all the aforesaid reasons this Court is of the view that a grantor/executant/donor/principal can seek remedy for legally enforceable right through a power of attorney holder by filing/instituting a writ petition under Article 226 of the Constitution.

43] As such this writ petition on behalf of the petitioner firm by the power attorney holder is maintainable.

44] Mr. Ete, learned Addl. Advocate General on receipt of instruction from the Public Works Department of the State submitted that the work of *"improvement and construction of road from Pakam Tin-ali to Jirdan Tri-Junction and Pakam-II PMGSY Road to Tyemro area at Aalo"* has been estimated for an amount of Rs. 400 Lakhs and the scheme for the said purpose have been approved under the Head of Account SPA, but the same is yet to be sanctioned. He also submitted as informed that the PWD of the State have informed that it has not allowed or authorised any individual or party to execute the said work and if any individual or party doing such kind of construction activities without the knowledge of the said department then the same is illegal and unauthorised and that the department clarified that no one shall execute any sort of construction work on the road without permission of the office.

45] Mr. Panging on the other hand exhibited some photos annexed to the writ petition and stated that the respondent Nos. 8 and 9 have carried out their work with regard to said road and the said facts have also been admitted by the respondent No. 9 in its said interlocutory application.

46] With regard to distribution of State largesse or Government contracts, it is well settled that a statutory body and instrumentalities of the State should act fairly by making it open for all eligible to submit their offers and the awarding of contract without inviting tender cannot be said to be fair and any such contract is liable to be quashed. Contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award

of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition amongst the tenderers, to provide for fair and equitable treatment of all tenderers and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution and any violation of this process, any government contract awarded by statutory bodies and instrumentalities of the State are liable to be set aside and quashed.

47] For the reasons above, the state respondents are directed to stop the work of *"improvement and construction of road from Pakam Tin-ali to Jirdan Tri-Junction and Pakam-II PMGSY Road to Tyemro area at Aalo"* being carried out by the private respondent Nos. 8 and 9. The state respondents are also directed not to allot the said work of the road, in question, under the Special Plan Assistance Schemes (SPA), without issuing/floating Notice Inviting Tender and not to release such grants and State largesse's sanctioned for the work of improvement and construction of said road, in question, to any firm or person as the case may be, without the due procedure established by law.

48] With the aforesaid observation and direction this writ petition stands allowed

49] The IA (WP) 81 (AP) 2015 preferred by the respondent No. 9 having no merit also stands rejected.

/ **JUDGE**

Paul