

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

ITANAGAR PERMANENT BENCH

WP(C) 96(AP)/2017

1. PENO ENTERPRISES,
Registered office at Naharlagun,
P.O. & P.S: Naharlagun,
Papum Pare District,
Arunachal Pradesh.

2. SHRI CHARU KASA,
S/o Late Charu Taguk,
R/o Dobam village,
P.O. & P.S.- Banderdewa,
Papum Pare District,
Arunachal Pradesh.

.....Petitioners

-Versus-

1. The State of Arunachal Pradesh,
Represented by its Secretary, Rural Roads Division,
Itanagar, Arunachal Pradesh.
2. The Chief Engineer,
Rural Roads Division,
Itanagar, Arunachal Pradesh.
3. The Superintendent Engineer,
Rural Works Circle, Itanagar-cum-Chairman,
Technical Bids Evaluation Committee.
4. The Executive Engineer,
Rural Works Circle,
Itanagar, Arunachal Pradesh.

5. M/s. Rigia Ku Enterprises,
Near MLA Cottage, Itanagar,
P.O. & P.S.- Itanagar,
Papum Pare District,
Arunachal Pradesh.

6. M/s. Suman Construction,
P.O. & P.S: Thakurpakur,
Kolkata, West Bengal.

.....Respondents

**BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA**

Advocates for the Petitioners : Mr. M. Kato, Mr. B. Sora, Mr. B. Lingu.

Advocates for the Respondents : Mr. T. Son, Mr. T. Torum, Mr. L. Rupam,
: Mr. N. Lamnio, Mr. N. Tate.

Date of hearing & Order : 12.05.2017

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. Kato, learned counsel for the petitioners. Also heard Mr. T. Son, learned counsel appearing for the respondent No. 6 as well as Mr. D. Soki, learned Addl. Sr. Govt. Advocate appearing for the respondents No. 1 to 4. None appears on call for the respondent No. 5.

2) The case of the petitioners is that the petitioner No. 1, namely M/s. Peno Enterprises is a class -I (B&R) registered contractor under civil category having its office at Bamang Cottage, Panchayat Colony, Naharlagun, P.O. & P.S. Naharlagun, Papum Pare District, Arunachal Pradesh. The petitioner No. 2, namely, Sri Charu Kasa has projected that he is the authorized representative of the petitioner No. 1. The petitioner No. 1 participated in a tender process pursuant to an E-Procurement Press notice bearing No. RWD/DPIU-II/NIT/2016-17 dated 31.01.2017, which was in respect of 7(seven) numbers of package for road works in the district of Kra-Daadi under the Pradhan Mantri

Gram Sadak Yojna. The Subject matter of the present writ petition is a tender for construction work related to a road from Chambang to Kurayer Road to Sengching (Stage-I) bearing package No. AR/14/01/052. It is projected that altogether 5(five) Firms/Contractors including the petitioner No. 1 firm participated in the tender process and in the evaluation of the technical bids, the bid of the petitioner No. 1 firm was rejected by the concerned State-respondents and the tenders of the private respondents No. 5 & 6 were found to be responsive. On the various grounds as stated in the writ petition, the petitioners have projected that gross illegality was committed by the State-respondents in rejecting the tender submitted by the petitioner No. 1 firm and therefore, this writ petition was filed for quashing the minutes of the technical bids evaluation dated 16.02.2017 and all the consequential actions pursuant thereto, further requiring the respondent No. 4, namely, the Executive Engineer Rural Works Circle, Itanagar, Arunachal Pradesh to issue fresh Notices Inviting Tender in respect of the said work in reference and/or for a direction to re-evaluate the technical bids of the petitioners. The respondent No. 3 and the respondent No. 6 have filed their respective affidavit-in-opposition in order to counter the allegations made in the writ petition.

3) In course of hearing today, the leaned Addl. Sr. Govt. Advocate for the respondents No. 1 to 4 and the learned counsel for the respondent No. 6 have raised a preliminary issue regarding maintainability of the present writ petition on the ground that the petitioner No. 2 was not the authorized representative of the petitioner No. 1 and in this writ petition no documents has been annexed to show that the petitioner No. 2 was either a constituted attorney or an authorized person on behalf of petitioner No. 1 of its sole proprietor to file this writ petition in his own name by arraying himself as the petitioner No. 2 in this writ petition. In support of their arguments, the leaned Add. Sr. Govt. Advocate for the respondents No. 1 to 4 and the learned counsel for the respondent No. 6 have referred to the judgment of this Court in the case of *Lokam Brothers and Ors. v. State of Arunachal Pradesh and Ors., 2015 (5) GLR 147* as well as judgment dated 01.05.2017 passed by this Court in WP(C) 95(AP)/17 in the case of *M/s. Peno Enterprises and another v. State of Arunachal Pradesh and 4 Ors.* It is submitted that as per the ratio of the case of *Lokam Brothers (supra)*, this Court has held that the writ petition which was filed by the petitioner therein on behalf of *Lokam Brothers*

(*supra*) was absolutely without authority and while arriving at the said finding, this Court has held as follows in paragraph 5 to 9:

"5. There is no manner of doubt that in the writ petition, no document was enclosed showing the petitioner's authority to act and/or to institute legal proceedings on behalf of M/s. Lokam Brothers. The only document annexed thereto, was the undated authorization letter, as quoted above. Mr. T. Son, learned counsel for the appellant submits that his prayer for withdrawing the writ petition with liberty to file a fresh writ petition, not having been acceded to, as such the judgment and order passed by the learned Single Judge cannot stand the scrutiny of law.

6. The issue before this court is as to whether the appellant is a 'person aggrieved' and had the locus to represent M/s. Lokam Brothers short of any power of authorization in the form as required under the law.

7. The concept of locus standi for filing a petition under article 226 of the Constitution of India have received consideration in a catena of decisions rendered by the Apex Court. In this context, reference is made to the decision in Jasbhai Motibhai Desai v. Toshan Kumar and Others, AIR 1976 SC 578. The consistent view of the Apex Court in respect of the concept of locus standi makes it clear that although the expression 'aggrieved person' denotes an elastic and elusive concept, however, the person approaching the writ court must necessarily show the extent of his interest as well as the nature and extent of pre-judice or injury suffered by him. In other words, an aggrieved person is one who has a particular or peculiar interest of his own. IN the reported judgment, the Apex Court had further elucidated that a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or

wrongfully refused him something or wrongfully affected his title to something. In fact, the Apex Court have laid down that to have locus standi in invoking extraordinary jurisdiction under article 226, the applicant should ordinarily be one who has a personal or individual right in the subject matter.

8. From the available records, it is apparent that the appellant is not a person aggrieved. He has not submitted the documents to show under what circumstances and under what authority he could espouse the cause of M/s. Lokam Brothers. The locus of the appellant being wholly absent, there is no infirmity in the findings and decisions of the learned Single Judge in dismissing the writ petition on the limited ground.

9. Before this Court, the learned counsel appearing for the appellant has produced a photocopy of an undated General power of Attorney alleged to have been registered on 15.1.2015. The authenticity of the said General Power of Attorney has been seriously objected to by Mr. R.H. Nabam, learned A.A.G. Arunachal Pradesh. It would be worthwhile to mention that a bare perusal of the photocopy of the General Power of Attorney produced by Mr. T. Son, learned counsel for the appellant, do not appear to be a document registered before an appropriate Registering Authority as required under the law. In fact, the said Power of Attorney do not indicate as to on which date the same was executed. It would also be worthwhile to mention that the Power of Attorney now produced before this Court was not produced before the learned Single Judge.

4) Insofar as the case of *M/s. Peno Enterprises (supra)* is concerned, both the petitioners therein are also the writ petitioner in the present case, it would be relevant to quote paragraph 16 of the said judgment:

"16. So far the first issue is concerned, in para 1 of the writ petition, it is stated that the petitioner No. 1, M/s. Peno Enterprises is a class-I (B&R) registered contractor, under civil category and the petitioner No. 2 is its authorized representative. However, the record shows that no documents of such authorization of Power of Attorney has been annexed in support of the aforesaid claim that the petitioner No. 2 is the duly authorized representative of the petitioner No. 1 the firm, which was the unsuccessful bidder in the aforesaid tender process. Referring to the decision of the Apex Court rendered in Jasbhai Motibhati Desai vs. Toshan Kumar and Ors., reported in AIR 1976 SC 578 a Division Bench of this Court in the case of M/s. Lokam Brothers and Ors. Vs. State of Arunachal Pradesh, reported in 2015 Legal Eagle (Gau) 936 held that "to have locus standi in invoking extra-ordinary jurisdiction under article 226, the applicant should ordinarily be one who has a personal or individual right in the subject matter". It is apparent on record that the writ petitioner No. 2 being the unauthorized person cannot initiate legal proceedings on behalf of the unsuccessful bidder, that is the petitioner No. 1 the firm for want of Power of Attorney or any legal instrument. Therefore, this Court has no hesitation in holding that the petitioner NO. 2, being not authorized to file the instant petition, has no locus standi to file the writ petition on behalf of the petitioner No. 1 the firm, which was the unsuccessful bidder in the tender process.

5) It is submitted that in view of the decision of this Court in both the aforesaid cases, the petitioner No. 2 in the present case is also required to show his locus standi to file the present writ petition on behalf of the petitioner No. 1 firm. In response to the preliminary issue of maintainability raised by the learned counsel for the respondents No. 1 to 4 as well as the learned counsel for the respondents No. 6, the learned counsel for the petitioner has produced a copy of the General Power of Attorney before this

Court, which is signed by one Sri Bamang Mangha as the executant and it is further projected that as per the said power of attorney, this petitioner has the power as well as the authority to file and maintain this present writ petition. It is further submitted that the case of *Lokam Brothers (supra)* is distinguishable and in this regard, it is submitted by the learned counsel for the petitioner that in the said case, this Court while deciding the issue similar to that raised in the present writ petition, but in the said case this Court was dealing with the question of a case being filed in the representative capacity.

6) It is also submitted that notwithstanding that the General Power of Attorney as produced now before this Court was not annexed to this writ petition, the said deficiency ought not to be taken as a ground to dismiss the writ petition as the non-filing thereof is curable defect.

7) In view of the question of maintainability of the present writ petition being raised in the present proceedings, this Court is not inclined at present to hear the parties on the merit of the matter as it is deemed expedient to dispose of the preliminary issue of maintainability as raised by the learned counsel for the respondents No. 1 to 4 as well as the learned counsel for the respondents No. 6 before hearing the case on merit.

8) On consideration the rival submissions advanced by the learned counsel for all the sides and on perusal of the material available on record including the case citation relied upon by the learned counsels for the respondents, this Court in the quest of whether an authorized representative can sue in his own name has deemed it fit to refer to the various other provisions of the law in this regard. At the outset it would be relevant to refer to the provisions of Order XXX Rule 10 of the Civil Procedure Code:

Rule 10. Suing of partners in name of firm- (1) *Any two or more person claiming or being liable as partner and carrying on business in India may sue or be sued in the name of the firm (if any) or which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of*

action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

9) It would also be relevant to refer to the provisions of Order I Rule 1 of the said Code is reads as follows:

Rule 1. Who may be joined as plaintiffs.- All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and
(b) if such persons brought separate suits, any common question of law or fact would arise.

10) It would also be relevant to quote the provisions of Section 2 of the Powers of Attorney, Act, 1882:

"2. Execution under power-of-attorney.- *The donee of a power-or-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 donee of the power in the name, and with the signature and seal, of the donor thereof."*

This Section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

11) It would also be relevant to refer to the definition of agent/agency as provided in Section 182 of the Contract Act:

“182. 'Agent' and 'Principal' defined.- An 'agent' is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, called the 'principal'.”

12) On a conjoint reading of the aforesaid provisions, this Court is of the considered view that by virtue of the powers conferred under a power of attorney, an attorney can only represent the principal as an agent, which is purportedly done by virtue of the power of attorney. The power of attorney does not give an authority to the attorney to substitute himself as the litigating party so as to enable him or authorize him to file a writ petition in his own name by substituting himself as the petitioner No.2 in place of the principal. This Court is of the considered view that if the proprietor of the petitioner No. 1 firm is Sri Bamang Mangha, as projected by Annexure-1 to the writ petition (which is an office order of the Office of the Chief Engineer (CSQ), PWD, Itanagar), then it was otherwise open for the petitioner No. 2 to be representative for the said proprietor and in that event only the proprietor of the petitioner No. 1 firm would have been arrayed as the petitioner No. 2, who can be validly represented by his attorney. In the present case in hand, it is seen that the instead of the proprietor joining the writ petition as the petitioner No.2, the attorney has substituted himself as the petitioner No.2. Therefore, except being the agent of the proprietor, the petitioner No. 2 cannot be said to have an independent right to maintain a writ petition in his own name.

13) In view of above, the ratio of the judgment of this Court in the case of *Lokam Brothers (supra)* as well as in the case of *M/s. Peno Enterprises (supra)* stands as a bar for the maintainability of the present writ petition. The petitioner No.2 can, if the power of attorney permits, represent the petitioner No.1, but by virtue of the power of attorney, this Court does not find any material to show that notwithstanding the same is not being filed in this writ petition, there is nothing on record to show that by virtue of the said powers, the petitioner No. 2, namely, Sri Charu Kasa was authorized to substitute himself as a party in this writ petition in place of the proprietor. The principles

of the Civil Procedure Code is followed in filing of the writ petition. Therefore, under the principles of Order XXX Rule 10 of the Civil Procedure Code, the firm i.e. petitioner No.1 was authorized to maintain a writ petition in its own name on being presented by the proprietor and it was open for the proprietor to maintain a writ petition to the attorney. However, if the attorney is working on behalf of the principle then such attorney, being merely an agent is not authorized to sue in his personal name. The interpretation of the judgment of this Court in the case of *Lokam Brothers (supra)* is not the acceptable interpretation.

14) Therefore, in view of the matter, this Court hold that the petitioner No. 2 could not have joined the writ petition as the petitioner No. 2 and in view of the judgment in the previous case of the petitioner No.1 i.e. M/s. Peno Enterprises (supra), this Court is compelled to follow the view taken in the said matter by holding that the present petitioner No. 2 has no locus standi to file the present writ petition on behalf of the petitioner No.1 firm, which was the unsuccessful bidder in the tender process.

15) Accordingly, this writ petition is found to be not maintainable and the same is dismissed.

16) The parties are left to bear their own cost.

JUDGE

Mkumar.