

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

**ITANAGAR PERMANENT BENCH**

**WP (C) 276 (AP) 2017**

**The Jang Large Sized Multipurpose Co-operative Society Ltd.,  
P.O/ P.S.- Jang, Tawang District, Arunachal Pradesh through  
Managing Director Shri Sangey Phuntso.**

**...Petitioner.**

**-Vs-**

1. *The Union of India through the Secretary, Ministry of Defence,  
Govt. of India, South Block,  
Central Secretariat, New Delhi,  
Delhi-110011.*
2. *The Secretary, Ministry of Defence,  
Govt. of India,  
South Block,  
Central Secretariat, New Delhi,  
Delhi-110011.*
3. *The Major General, Headquarters,  
Eastern Command, Fort William,  
Kolkata-700021..*
4. *The Brigadier, Brigadier Army,  
Service Corps, Headquarters 3-Corps,  
Dimapur, Nagaland.*

**.....Respondents.**

For the petitioner	:	Mr. D. Panging, Advocate.
For the respondents	:	Mr. N. Ratan, learned CGC.
Date of hearing	:	<b>29.06.2017.</b>
Date of Judgment and Order	:	<b>07.07.2017.</b>

**BEFORE**

**HON'BLE MR. JUSTICE AJIT BORTHAKUR**

**JUDGMENT & ORDER (CAV)**

*( Ajit Borthakur, J.)*

Heard Mr. D. Panging, learned counsel for the petitioner and Mr. N. Ratan, learned CGC for the respondents-Union of India.

**2].** By this application under Article 226 of the Constitution of India, the petitioner, a registered Co-operative Society Ltd, has challenged the legality

and validity of the letter No. PC/ Raksha/63030/Q/ST 5/ 2815/ D(QS)/ 2017, dated 11.05.2017, written by the Under Secretary to the Government of India, Ministry of Defence, New Delhi to the Chief of the Army Staff, New Delhi conveying sanction of the President of India to keep business dealings with the petitioner-Co-operative Society Ltd., under suspension till the conclusion of the Court of Enquiry into the charges of corruption.

**3].** The petitioner-Co-operative Society Ltd., has also challenged the legality and validity of the letter No. 313201/25/17-18/ST-5, dated 06.06.2017, issued by the respondent No. 3-the Major General, HQ, Eastern Command, Kolkata whereby the petitioner was intimated that in terms of the instructions issued by the Government of India, Ministry of Defence, the ongoing 35 negotiated contracts with various Stations of 3 Corps in Arunachal Pradesh would stand suspended with effect from 08.06.2017.

**4].** The petitioner-Co-operative Society Ltd., has further challenged the action on the part of the respondent authorities in inviting online bids from registered Class-A, B, C Contractors/ Firms for supply of perishable items at different Stations being earlier carried out by the petitioner for the assured period from 16.06.2017 to 31.03.2018, before completion of the Court of Enquiry which was expected to be concluded within a period of 2 (two) months as intimated vide letter No. PC/ RAKSHA/ 63030/Q/ST-5/2815/D(QS)/ 2017, dated 11.05.2017.

**5].** The brief case of the petitioner-Co-operative Society Ltd. is that initially in the year 1999, it was allowed by the 4 Corps of Army at Tezpur to supply potatoes and onions for its Unit based at Tezu. On being satisfied with the petitioner's performance and conclusion of negotiated contracts, the petitioner continued to supply of fresh fruits, vegetables, non-veg items etc., to the Army Units located in Arunachal Pradesh in HQ-3-Corps Zone. Thereafter, on conclusion of further negotiated contracts, acceptance of tender notice was issued on 23.03.2017 and 30.03.2017 for supply of the items, the petitioner was also continuing supply for the period 01.04.2017 to

31.03.2018. However, one Mr. Pramod Giri, an agent of the petitioner, lodged a complaint with the Major General (ASC), Eastern Command, Kolkata alleging malpractice by the C.O., 556 ASC BN, Likhali under 3 Corps, which was duly forwarded to the petitioner for authenticity verification and thereupon, the petitioner submitted detail comments vide letter, dated 21.03.2016. Although the aforesaid complaint was withdrawn by the complainant, on 23.04.2016, a Court of Enquiry was ordered by the respondent authorities and till the conclusion of the Court of Enquiry on charges of corruption, the business dealings with the petitioner-Co-operative Society Ltd. has been placed under suspension, without affording an opportunity to the petitioner of being heard.

**6]** The respondents-Union of India in their affidavit-in-opposition and Mr. N. Ratan, learned CGC appearing on their behalf contended that the negotiated contracts with the Co-operative Societies are concluded only on Government sanction and a Society can continue the business with the Indian Army till Government sanction permits. It has been stated that the aspects pertaining to termination/ suspension of contract on grounds of involvement in corruption/ bribery by any representative (s) of the firm/ society are provided in the Contract Deed, Para-8 of IAFZ-2120, to which the Society representative is a signatory and also as per 25 (c) of Government of India, Ministry of Defence Letter No. PC/ RAKSHA/63060/Q/ ST-5 3633/D (QS), dated 26.09.2006. Apart from this, it has been further stated that in response to the query from the Army authorities on the complaint of the Power of Attorney holder viz. Mr. Pramod Giri, the petitioner-Co-operative Society replied that all allegations contained in the complaint were made on false information and requested that the complaint be disregarded. In the meantime, the Power of Attorney of Mr. Pramod Giri was terminated/ cancelled and in his place new person was appointed and also said Mr. Pramod Giri withdrew his complaint. The initial investigation into the allegations by the General Officer Commanding, 56 Infantry Division, being inconclusive, a Court of Enquiry was ordered by the Headquarters of 3 Corps in the month of August, 2016, which is yet to be completed. As per instruction of the Headquarters of 3 Corps, negotiated contracts with the

petitioner-Co-operative Society are not taken up till the aforesaid Court of Enquiry is over. The respondents-Union of India and Mr. N. Ratan, learned CGC appearing on their behalf further pleaded that in the interim progress report of the Court of Enquiry clear complaint of gratification being given by a member of the petitioner-Co-operative Society viz. Mr. K. K. Yangfo with a request to ban the petitioner's-co-operative Society and not to enter into contracts in future, but on issue of notice twice for his appearance by registered post for the purpose of recording his statement returned undelivered and as such, it is clarified that the said person's complaint has no relevancy to the order of suspension of business dealings with the petitioner-Co-operative Society on having found prima facie evidence of bribery. According to the respondents-Union of India, for the aforesaid reasons, the writ petition is liable to be dismissed with cost.

**7].** Mr. D. Panging, learned counsel for the petitioner, referring to the Apex Court decision rendered in Travancore Devaswom Board-vs-S. Neelacantan Moothathu & Ors., reported in AIR 1955 TC 83, has submitted that as Mr. Pramod Giri, the Power of Attorney holder of the petitioner-Co-operative Society acted in excess of his authority by making false and frivolous complaint with a malafide intention against the officer of the Army, his such act does not bind the principal, that is, the petitioner-co-operative Society. Mr. Panging, learned counsel has vehemently submitted that in the attending facts, the petitioner-Co-operative society was deprived of the right of hearing before the business dealings was scraped/ suspended by the respondent-Army authorities in breach of the established principle of natural justice. Mr. Panging has laid emphasis on the ratio of the judgment of the Apex Court rendered in the Case of Maneka Gandhi-vs-Union of India & Anr., reported in 1978 SC 597 in this regard. Mr. Panging, learned counsel has submitted that no notice was given to the petitioner-Co-operative Society before the coercive measure for suspension of business dealings was initiated based on the criminal act of its aforementioned Power of Attorney holder. It has been further submitted that the respondents-Union of India has thereby acted arbitrarily violating the established standards or norms by whimsically suspending the contractual obligations. Mr. Panging has relevantly cited the

decision of the Apex Court in *New Horizons Ltd & Anr.,-vs- Union of India & Ors.*, reported in (1995) 1 SCC 478. According to Mr. Panging, learned counsel, the petitioner-Co-operative Society has suffered huge loss of money and materials due to the suspension of the contracts in force with the respondents-Army authority without any accusation of breach of terms of the contracts, without any prior notice for hearing and without assigning any reasons in the relevant order, dated 11.05.2017, issued by the Under Secretary to the Government of India, Ministry of Defence, New Delhi violating the principles of natural justice. Mr. Panging has relevantly laid emphasis on the decision of the Apex Court rendered in *Delhi Transport Corporation-vs.- D.T.C. Mazdoor Congress & Ors.*, reported in 1991 Supp (1) SCC 600.

**8].** Mr. N. Ratan, learned CGC appearing on behalf of the respondents-Union of India has emphasized the reasons for the action as stated above, more particularly in the affidavit-in-opposition against the petitioner-Co-operative Society.

**9].** Upon hearing the learned counsels of both the sides and perusal of the pleadings, it transpires that the petitioner, which is a registered Co-operative Society under Section 9 (1) of the Arunachal Pradesh Co-operative Societies Act, 1978, had been performing contractual works of supply of eatable and non-eatable items to the Indian Army Units in Arunachal Pradesh under its 4 Corps at Tezpur and then under 3 Corps at Dimapur since the year 1999 with annual renewal of the contracts till suspension of the contracts to the satisfaction of all concerned in terms of the contracts entered into, from time to time, between the parties. In course of uninterrupted continuation of supply contracts from the year 1999, the Ministry of Defence conveyed its approval vide letter, dated 17.01.2017, at Annexure-5 for continuation of conclusion of negotiated contracts with the petitioner-Co-operative Society for a further period of 1 (one) year, with effect from 01.04.2017 to 31.03.2018 for supply of fresh fruits, vegetables, non-veg items, firewood etc., to the Army Units in Arunachal Pradesh under HQ 3-Corps Zone. After negotiations, the petitioner-Co-operative Society's tenders were accepted by the respondent No. 4-the Brigadier, 3-Corps,

Dimapur vide Annexure-7 series and supply orders were issued on 24.03.2017 and 30.03.2017 for the period 01.04.2017 to 31.03.2018 and accordingly, the petitioner discharged its obligations of supply of various items to the satisfaction of all concerned under the contracts.

**10].** It is the admitted position that based on a complaint, dated 29.02.2016, vide Annexure-4 lodged by Mr. Pramod Giri, one of the petitioner's Power of Attorney holder addressed to the respondent No. 3-Major General (ASC), Eastern Command, Kolkata to the effect that C.O. 556 ASC BN, Likhabali, under 3-Corps indulged in corruption by way of demanding 5% of total work, repeatedly over mobile phone, lest threatened to spoil the consignment, whereupon, as requested, the petitioner-Co-operative Society submitted its comments, vide letter, dated 21.03.2016, terming the accusation as false and baseless and thereafter, by letter, dated 23.04.2016, the said complainant withdrew his complaint terming that his complaint was the result of wrong information and begged for apology for the mistake. The matter virtually ended there and his Power of Attorney was terminated from the side of the petitioner-Co-operative Society. Even thereafter, fresh tender works were concluded on 24.03.2017 and 30.03.2017 between the parties and continued their business dealings, but the respondents-authority directed for Court of Enquiry into the allegations and placed the business dealings with the petitioner-Co-operative Society under suspension till conclusion of the Court of Enquiry vide letter aforementioned and communicated to the petitioner vide letter at Annexure-9. Here, it may be mentioned that one Mr. K. K. Yangfo, another constituted Power of Attorney holder of the petitioner for the period 16.06.2015 to 31.03.2017 also raised certain allegations against the petitioner-Co-operative Society vide complaint, dated 29.05.2017, but the respondents in Para 7 of their affidavit-in-opposition made it clear that the complaint of Mr. K. K. Yangfo, on whom no notice by registered post, issued twice, could be served, has no relevancy to the aforesaid business suspension order.

**11].** The respondents have pleaded that the termination/ suspension of contracts on the grounds of involvement in corruption/ bribery by any representative (s) of the firm society are provided for in Para 8 of the

contract Deed of IAFZ-2120 to which the petitioner is a signatory and also as per Para 25 (c) of the Government of India, Ministry of Defence, letter No. PC/ RAKSHA/63060/Q/ST-5 3633/ D (QS), dated 26.09.2006, which reads as follows:-

***“If there is strong justification for believing that the proprietor or employee or representative of the firm has been guilty of malpractices, such as, bribery, corruption, fraud, substitution of tenders, interpolation, misrepresentation, evasion or habitual default in payment of any tax levied by law or any other act of dishonesty aimed at causing a wrongful loss to the State, then the contractor can be banned from participating in tender activity.***

**Exit Clause:-** The officer sanction the contract or his successor or the officer officiating in his place as per the promulgation orders may rescind this contract by notice to me/ us in writing”.

**12].** As indicated above, the root cause of disturbance between the parties in the contract business relationship rooted in the complaint filed by the petitioner’s agent viz. Mr. Pramod Giri against an officer of the Army, which was subsequently, of course, withdrawn by him and therefore, not arising out of non-compliance of the terms of the contract by the petitioner-Co-operative Society. The aforesaid criminal act of making unwarranted complaint of the agent of the petitioner against an Army Officer was undoubtedly beyond his lawful duty or in excess of lawful authority as clarified by the petitioner in their comments vide letter, dated 21.03.2016, and as such, does not bind the principal, i.e., the petitioner-Co-operative Society. In Travancore Devaswom Board-vs- S. Neelcantan Moothathu & Ors., reported in AIR 1955 T.C. 83, the apex Court held:-

***“The principal will not normally be liable for the unauthorized criminal acts of the agent or for the other acts done by him in excess of his authority”.***

**13].** A similar view was reiterated by the Apex Court in Delhi Development Authority-vs.- Skipper Construction Co. (P) Ltd & Anr., reported in (1996) 4 SCC 622, wherein, it was held that illegal/ malafide actions of Officers or servants do not bind the master. This Court is, therefore, of the opinion that the aforesaid act of the agent (since terminated) ought not to have affected the contractual terms and conditions entered into between the parties. Further, the Apex Court in its landmark judgment rendered in Smti. Maneka Gandhi-vs- Union of India, reported in AIR 1978 SC 597, quoting the following words from State of Orissa-vs-Dr. (Miss) Binapani Dei, AIR 1967 SC 1269, laid emphasis on the duty of giving reasonable opportunity to be heard by the authority before any action proposed to be initiated against an individual:

***"The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed. It need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order of is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case".***

**14].** It is apparent from the pleadings of the parties to the instant application that the aforementioned suspension of supply contracts entered into with the petitioner-Co-operative Society, dated 11.05.2017, and communicated to the petitioner vide letter at Annexure-9, dated 06.06.2017, was issued without prior notice and without granting any opportunity of being heard to the petitioner. The aforesaid act on the part of the

respondents- authority being in complete disregard to the established principles of natural justice or fair play in action for having not given any notice on such contemplated action and thereby without giving a fair opportunity of hearing thereon certainly rendered the aforesaid impugned order of suspension of business dealings invalid. The Apex Court in a catena of judgments such as in Delhi Transport Corporation-vs- D. T. C. Mazdoor Congress & Ors., reported in 1991 Supp (1) SCC 600 and in New Horizons Ltd., & Anr.,-vs- Union of India and Ors., reported in (1995) 1 SCC 478 reiterated on the need of strict observation of the principles of natural justice by the State in such fact situations.

**15]. Accordingly, the writ petition stands allowed.**

**16]. The impugned letter Nos. PC/ RAKSHA/63030/ Q/ST-5/2815/ D/(QS)/ 2017, dated 11.05.2015 and No. 313201/ 25/17-18/ ST-5, dated 06.06.2017 are quashed and set aside.**

**17]. The respondent authorities may, however, given liberty to initiate fresh action, if so advised, following the principles of natural justice and in accordance with law.**

With the aforesaid directions, this writ petition stands disposed of.

**JUDGE**

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