

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extraordinary Jurisdiction)

SINGLE BENCH: BHASKAR RAJ PRADHAN, JUDGE.

I.A. No. 08 of 2018
IN
W.P. (C) No. 55 of 2017

Sri Avantika Contractors (I) Ltd.
Door No. 8-2-603/23/3 &15
3rd Floor, HSR Summit,
Beside No. 1 News Channel,
Road No. 10, Banjara Hills,
Hyderabad-500034.

.... Petitioner

versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi-110001.
2. Chief Engineer,
Indo-Bangladesh Border Zone-II (IBBZ-II)
Central Public Works Department,
Government of India,
Matigara, Siliguri.
3. The Superintendent Engineer,
Border Road, Project Circle (BRPC),
Mangan, North Sikkim.
4. The Executive Engineer,
Border Road Project Circle Division-1, (BRPCD-1)
Chungthang, North Sikkim.

.... Respondents

Mr. U. Narayan Sharma,
U. N. S. Construction,
A Government & Private Contractor
and Supplier Grade 1-AA)
Rangpo East Sikkim.

.... Applicant

Application for Impleadment.

I.A. No.08 of 2018
IN
W.P. (C) No.55 of 2017
Sri Avantika Contractors (I) Ltd. vs. Union of India & Ors.

Appearance:

Mr. Jorgay Namka and Ms.Panila Theengh, Advocates for Mr. U. Narayan Sharma (Applicant).

Mr. B. S. Banthia, Mr. Vaibhav Mishra, Mr. Passang Tshering Bhutia, Mr. Sushant Subba and Mr. Ugen Lepcha Advocates for the Petitioner.

Mr. Karma Thinlay, Central Govt. Counsel with Mr. Thinlay Dorjee Bhutia, Advocate for the Respondent.

ORDER

(23.04.2018)

Bhaskar Raj Pradhan, J

1. Mr. U. Narayan Sharma, the Applicant in this application seeks to implead himself in the present Writ Petition as a Respondent.

2. Heard Mr. Jorgay Namka, Learned Counsel for the Applicant as well as Mr. B. S. Banthia, Learned Counsel for the Petitioner in the Writ Petition.

3. From the pleadings in the application it seems that one SSK SSKC-SSKI (JV) had issued work orders dated 23.02.2017 for supply of loaders, rock breakers, excavators and tippers on monthly hire basis for Thangu-Muguthang road project site at North Sikkim on certain terms and conditions to the Applicant herein. The Applicant contends that in the said work orders SSKC-SSKI (JV) had projected that the Thangu-Muguthang road project site at North Sikkim was theirs. The Applicant

I.A. No.08 of 2018
IN
W.P. (C) No.55 of 2017
Sri Avantika Contractors (I) Ltd. vs. Union of India & Ors.

submits that the authorised signatory of the Petitioner in the Writ Petition as well as SSKC-SSKI (JV) is one and the same person, which is evidently so. The Applicant has also filed photocopies of various bills as Annexure-A6 (collectively) to the application. All the said bills *prima-facie* reflects a privity contract between SSKC-SSKI (JV) and the Applicant who seeks to implead himself in the present Writ Petition. The e-mail exchanges which have been filed as Annexure-A8 (collectively) also suggest the same fact. The Applicant has filed, what it claims to be a copy of a web page of Shri Sai Krishna Constructions, in which it has been claimed that the ITBP road from Thangu to Muguthangu (31 kms) in the State of Sikkim is being executed by SSKC-SSKI (JV). The Applicant thus submits that SSKC-SSKI (JV) and Sri Awantika Contractors (I) Ltd. is one and the same. Consequently, the Applicant pleads that the Petitioner having issued the said work orders to the Applicant and having utilized their services failed to make payment of the Applicant's bill till September, 2017 for an amount of Rs.1,63,18,623/- (Rupees one crore sixty three lakhs eighteen thousand six hundred twenty three) which have been duly verified by the Petitioner and a further amount for Rs.17,64,499/- (Rupees seventeen lakhs sixty four thousand four hundred ninety nine) which is yet to be authenticated. The Applicant submits that since the Petitioner has, in the present Writ Petition, sought direction upon the Respondents

I.A. No.08 of 2018
IN
W.P. (C) No.55 of 2017
Sri Avantika Contractors (I) Ltd. vs. Union of India & Ors.

to clear all pending outstanding dues along with interest to the Petitioner grave and serious prejudice would be caused to the Applicant if he is not made a Respondent in the present Writ Petition.

4. Mr. B. S. Banthia, *per-contra*, submits that the principles of order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) must be applied to test whether the Applicant should be made a party Respondent in the present Writ Petition in which the Petitioner is aggrieved by the act of the Respondents for issuing a tender for construction of ITBP road in spite of the fact that the very same work had been awarded to the Petitioner. In so doing, Mr. B. S. Banthia submits, the present application is liable to be dismissed.

5. The Petitioner has also filed a reply dated 09.04.2018 to the Application under consideration. It is submitted that the Applicant has no *locus standi* or any interest in the present Writ Petition. The Petitioner contends that if at all the Applicant is aggrieved he is entitled to other legal remedies which are available to settle his accounts with the Petitioner and this is not the correct forum. The Petitioner has not denied the specific averments made by the Applicant with regard to the work orders dated 23.02.2017 for the supply of two JCB (black hole loader) 3 DX, supply of three JCB rock breaker JS-205, three JCB Excavator JS-205 and supply of ten MAN

I.A. No.08 of 2018
IN
W.P. (C) No.55 of 2017
Sri Avantika Contractors (I) Ltd. vs. Union of India & Ors.

Tipplers on monthly hire basis for its Thangu-Muguthang Road Project site at North Sikkim and submits that the same are matters of record. The Petitioner also states that due to paucity of time it has not been able to verify the facts submitted in the correspondence paragraphs. The Petitioner has vehemently denied the contents of the averments made by the Applicant with regard to the relationship between the Petitioner and SSKC-SSKI (JV) attributed by the Applicant in paragraph 13 to 16 of the application.

6. The Writ Petition filed by the Petitioner seeks a mandamus directing the Respondents to stay the tender bid for construction of ITBP Road from Lugnak-La to Muguthang in relation to earth work, drainage and protection work, culverts, bituminous surfacing works and other appurtenant structures from Lugnak-La (altitude 16,500 ft) to road 31.40 km (Muguthang) (altitude 14,00 ft.) (length 11.40 kms. approx.). The Petitioner has also prayed for a direction to the Respondents to clear all outstanding dues along with interest to the Petitioner. The Writ Petition does not seek any prayers against the Applicant nor is there any averments relating to the Applicant. The Writ Petition relates only to the dispute and differences between the Petitioner and the Respondents.

7. Rule 101 of the Sikkim High Court (Practice & Procedure) Rules, 2011 (the said P.P. Rules) provides:

I.A. No.08 of 2018
IN
W.P. (C) No.55 of 2017
Sri Avantika Contractors (I) Ltd. vs. Union of India & Ors.

“101. Joinder of respondents- *Every person who is likely to be affected in any manner by the result of a petition shall be joined as a respondent thereto. Any petition in which a necessary party is not impleaded shall be liable to be dismissed.”*

8. Rule 101 of the said P.P. Rules, 2011 therefore, clearly mandates that every person who is likely to be affected in any manner by the result of the petition shall be joined as a Respondent to the Writ Petition. It also provides that if a “*necessary party*” is not impleaded the Writ Petition is liable to be dismissed.

9. Rule 113 of the said P. P. Rules provides:

“113. Application of C.P.C.:- *In all matters for which no provision is made by these rules, the provisions of the Code of Civil Procedure, 1908, shall apply mutatis mutandis, in so far as they are not inconsistent with these rules.”*

10. Rule 113 of the said P.P.Rules therefore, provides that the provisions of the CPC would apply *mutatis mutandis* in all matters for which no provision has been made by the said P.P. Rules and to the extent that they are not inconsistent with the said P.P. Rules.

11. As Rule 101 of the said P.P. Rules clearly provides for the criteria for joinder of Respondents to Writ Petition the said P.P. Rules would govern.

12. It is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but

I.A. No.08 of 2018
IN
W.P. (C) No.55 of 2017
Sri Avantika Contractors (I) Ltd. vs. Union of India & Ors.

whose presence is necessary for a complete and final decision on the question involved in the proceeding.

13. A perusal of the pleadings in the application along with the documents filed thereto and the reply thereof by the Petitioner it is certain that the Applicant is not going to be affected in any manner by the result of the Writ Petition between the Petitioner and the Respondents. Admittedly the Applicant is only a supplier of loaders, rock breakers, excavators and tippers to SSKC-SSKI (JV) which is not a party to the present Writ Petition. Even if there is a privity of contract between the Petitioner and the Applicant, and the Applicant has a genuine grievance against the Petitioner or SSKC-SSKI (JV) for payments which are due and payable, the inter-se contractual obligations can be effectively adjudicated in a proper forum and not in the present writ proceedings which seeks adjudication of the Petitioner's allegation about the high handedness of the Respondents in issuing the impugned tender bid in spite of the fact that the Petitioner had been working on the same project on a valid tender. It is equally certain that the Applicant is not a party without whom no order can be made effectively or in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The prayer in the Writ Petition for a direction upon

I.A. No.08 of 2018
IN
W.P. (C) No.55 of 2017
Sri Avantika Contractors (I) Ltd. vs. Union of India & Ors.

the Respondents to clear all pending dues along with interest can be decided without the Applicant nor is the Applicant's presence necessary for a complete and final decision on the question.

14. It is also quite evident that it would be prejudicial to the parties to the contract to examine further the dispute and differences between the Applicant and SSKC-SSKI (JV) or the relationship between the Petitioner and SSKC-SSKI (JV) in the present application in the present proceedings. Thus, leaving the option open to the Applicant to take recourse to any course of action as the Applicant may be advised, the present application is dismissed. No orders as to cost.

Judge
23.04.2018

Approved for reporting: yes.
Internet: yes.

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