

M/S D.M. Groups And 2 Ors. Vs M/S A.C.T. Builders And Co. And 4 Ors.

Court: Gauhati High Court

Date of Decision: July 14, 2021

Hon'ble Judges: Sudhanshu Dhulia, J; Manash Ranjan Pathak, J

Bench: Division Bench

Advocate: P Mahanta

Final Decision: Allowed

Judgement

The matter is taken up through video conferencing.

Heard Mr. P. Mahanta, learned counsel for the appellants. Also heard Mr. T.T. Tara, learned counsel for the respondent No.1 and Mr. N.N.B.

Choudhury, learned Additional Advocate General, Arunachal Pradesh, appearing for the respondent Nos.2 to 5.

This writ appeal has been filed challenging the order dated 09.03.2021 passed by the learned Single Judge in WP(C) No.47(AP)/2021.

The matter relates to the State of Arunachal Pradesh and the only question here is whether the Project Director of District Rural Development

Agency (DRDA) of East Kameng District had the jurisdiction to float tender for another district, i.e. Pakke Kessang District.

The learned Single Judge was of the view that this was without jurisdiction and, therefore, the Notice Inviting Tender (NIT) dated 15.02.2021 has

been quashed. The writ appellant, who was one of the participants in the tender and who was not made a party by the writ petitioner (present

respondent No.1) had filed this writ appeal along with leave to appeal. The leave was granted by this Court on 28.04.2021 and on the same day, i.e. on

28.04.2021, the order of the learned Single Judge was stayed, although it was further stated in the interim order that the tender process may go on but

it shall not be finalised.

On these set of facts, we have heard the learned counsel appearing for the parties.

The admitted facts in this case are that the new district of Pakke Kessang was earlier a part of the East Kameng District and it was only bifurcated

by an order of the Government dated 16.11.2020. In the order of the Government of Arunachal Pradesh, Department of Rural Development dated

16.11.2020, three districts were created including the district of Pakke Kessang but then that was with a caveat mentioned in Paragraph 3 of the

order, which states as under:-

“3. The newly created DRDAs shall be manned by the officer/officials from the existing DRDAs and there is no extra recruitment of staff

and no further financial implication in operationalisation of these DRDAs.”

In other words, for the newly created districts, including the district of Pakke Kessang, the earlier DRDA, i.e. DRDA of East Kameng, shall continue

to have the jurisdiction. In fact, the first tender was floated by the Project Director of East Kameng District on 18.08.2020 even before the

bifurcation. But since there was no response to the said tender, the second NIT was given by the Project Director of DRDA, East Kameng District

on 15.02.2021. At this juncture, it would be necessary to state that the tenders were called for a Project under MGNREGA, which is under District

Rural Development Agency and the authority concerned is the Project Director of DRDA. The tender was for “Supply and Procurement of

Materials pertaining to MGNREGA works”.

From the counter affidavit, which had been filed by the State before the learned Single Judge, it is also very apparent that the six persons, who had

purchased the tender form also included the present writ appellant as well as the writ petitioner, who is presently respondent No.1 before this Court.

In other words, it is not a case where the petitioner could have said that he was not aware of the notice. After purchasing the tender, it is again an

admitted fact that he did not apply for it but instead challenged the entire process before this Court on the ground of jurisdiction. The fate of the writ

petition, we have already indicated, was in favour of the writ petitioner.

The learned Single Judge had formed an opinion that admittedly since the work is for Pakke Kessang District and since Pakke Kessang District has

its own Project Director of DRDA appointed on 10.02.2021, it is only the Project Director, DRDA, Pakke Kessang District who had the jurisdiction in

the matter and not the Project Director, DRDA of East Kameng District.

At this stage, we must place on record the stand taken by the State Government before the learned Single Judge. The stand was categorical that the

order dated 16.11.2020 gave the jurisdiction to Project Director of DRDA, East Kameng in Pakke Kessang District as well and as far as the

appointment of the Project Director of Pakke Kessang District on 10.02.2021 is concerned, the same is in violation of law as this Project Director has

been appointed by the Deputy Commissioner of Pakke Kessang District, who has no authority to make such appointment, as Project Director has to

be first selected by a Selection Committee consisting of Chief Secretary, Commissioner, amongst other members, and on recommendations made by

the Selection Committee, the Government makes such an appointment. Therefore, the legality of the appointment of the Project Director, DRDA of

Pakke Kessang appointed on 10.02.2021 was not considered by the learned Single Judge as the learned Single Judge was of the view that the Project

Direct, DRDA, East Kameng had no jurisdiction in the matter. In fact, the stand of the State Government is clearly reflected in Paragraphs 6 and 7 of

their affidavit filed before the learned Single Judge, which is to the following effect :-

“6. That with regard to the statement made in paragraph 4 of the writ petition, the deponent begs to state that notification for creation of

District Rural Development Agency (DRDA) Pakke-Kessang was issued only on 01.02.2021, after bifurcation of Pakke Kessang District

from East Kameng District. It is to state that after the creation of DRDA Pakke Kessang District, no separate Arunachal Pradesh Civil

Service (APCS) officer of senior grade has been appointed as Project Director for Pakke Kessang District by the competent authority till

date. Prior to notification dated 16.11.2020 issued on 01.02.2021, it has been the Project Director, East Kameng District, who has been

discharging the power and function of Project Director, Pakke Kessang District. And even after the creation of DRDA Pakke Kessand, still

the Project Director, East Kameng District is the administrative authority of the Pakke Kessang District, as till dated neither the Selection

Committee nor the Government has approved or appointed any officer to discharge the power and function of Project Director, DRDA,

Pakke Kessang District.

7. That with regard to the statement made in paragraph 5 of the writ petition, the deponent begs to state that the Deputy Commissioner,

Pakke-Kessang District, has no authority to appoint Project Director. Rather, as per the Office Memorandum dated 12.06.1995 which is

still in force, a Project Director can be appointed by a Selection Committee consisting of (i) Chief Secretary, as Chairman, (ii) Commissioner

(RD)/Secretary, as a Member, (iii) Commissioner (Personnel)/Secretary (Personal), as a Member, and (iv) Director (RD), as a Member &

Convener. The appointment of Project Director by Deputy Commissioner is de hors the rules and guidelines, which is Non-est and void ab

initio. It is imperative to mention that till date the Selection Committee or the Government have not approved or appointed any officer of

Pakke-Kessang District to the charge of the Project Director, Pakke-Kessang District. It is the Project Director, East Kameng District, who

has been conferred with the power to administer as the Project Director of both the district.

Having heard the learned counsel appearing for the parties, we are of the view that as far as the work of DRDA is concerned, since there is no

validly appointed Project Director of DRDA, Pakke Kessang District and since the bifurcation order dated 16.11.2020 clearly states that the Project

Director of East Kameng District will continue to have jurisdiction in all matters relating to DRDA, Pakke Kessang, there is absolutely no issue of

jurisdiction in the NIT floated by the Project Director, DRDA, East Kameng for Pakke Kessang District on 15.02.2021.

We, therefore, allow the writ appeal, and set aside the order dated 09.03.2021 passed by the learned Single Judge in WP(C) No.47(AP)/2021.

By interim order dated 28.04.2021, we have already directed that the tender process may continue. The tender process shall now proceed and be

finalised in accordance with law.

We make it very clear that we have only given our verdict as to the present contract. Subsequent to finalisation of the contract, how will the work be

executed and by which authority will it be executed, will depend on further orders of the Government of Arunachal Pradesh.