

**W.P. (C) No. 34 of 2022**  
**Mr. Sonam Tsewang Bhutia & Ors. vs. State of Sikkim & Ors.**

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Extra Ordinary Jurisdiction)

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**SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
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1. Mr. Sonam Tsewang Bhutia,  
S/o Mr. Lobsang Wangchuk Bhutia,  
R/o Gnathang GPU,  
J.N. Road, East Sikkim  
Pin No. 737101.
2. Mr. Jigme Dorjee Bhutia,  
S/o Late Tashi Bhutia,  
R/o Yakla Village, Gnathang GPU,  
J.N. Road, East Sikkim,  
Pin No. 737101.
3. Mr. Tenzing P. Bhutia,  
S/o Late Singhi Bhutia,  
R/o Gnathang GPU,  
J.N. Road, East Sikkim,  
Pin No. 737101.
4. Mr. Pempa Tshering Bhutia,  
S/o Mr. Tshering Sangpo Bhutia,  
R/o Bhojoghari, East Sikkim  
Pin No. 737101.

..... Petitioners

**Versus**

1. State of Sikkim through,  
The Chief Secretary,  
Government of Sikkim  
Tashiling Secretariat,  
Gangtok, East Sikkim,  
Pin No. 737101  
Email: [cs-skm@nic.in](mailto:cs-skm@nic.in)
2. The Commissioner-cum-Secretary,  
Rural Management Development Department  
Government of Sikkim,  
Gram Vikash Bhawan,  
Gangtok, East Sikkim  
Pin No.737101  
Email: [dit-sik@nic.in](mailto:dit-sik@nic.in)

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3. The Divisional Engineer,  
East District Zilla Panchayat,  
Rural Development Department,  
DAC-Sichey, East Sikkim,  
Pin No. 737101  
Email: [dit-sik@nic.in](mailto:dit-sik@nic.in)
4. Block Development Officer,  
Block Administrative Center,  
Nandok, East Sikkim,  
Pin No. 737102.
5. Mr. Lobsang Penzor Bhutia,  
S/o Late Tenzing Ongda Bhutia,  
Panchayat President, 15-Gnathang,  
Gram Panchayat Unit, Panchayat  
Office Near Jubilant School,  
Old SNT Complex Chandmari, Gangtok,  
Pin No. 737103.
6. Mr. Tenzing Thinlay Bhutia,  
S/o Sonam Gyatso Bhutia,  
R/o Kupup, J. N. Road, Gangtok  
East Sikkim,  
Pin No. 737102.
7. Mrs. Yangden Bhutia,  
Wife of Kesang Bhutia,  
R/o Chandmari Gangtok,  
East Sikkim Pin No. 737102.
8. Mr. Sherap Sangpo Bhutia,  
S/o Tsultrim Bhutia,  
R/o Zaluk, R.N. Road,  
East Sikkim, Pin No. 737102.

.....Respondents

**Application under Article 226 of the Constitution of  
India.**

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**Appearance:**

Mr. Karma Thinlay Namgyal, Senior Advocate with Mr. K.T. Gyatso and Mr. Yashir N. Tamang, Advocates for the Petitioners.

Dr. Doma T. Bhutia, Additional Advocate General for the Respondent Nos. 1 to 4.

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Dr. Doma T. Bhutia, Senior Advocate with Mr. S.K. Chettri, Advocate for respondent no.5.

Mr. Zangpo Sherpa and Ms. Anjali Shah, Advocates for the respondent no.6.

Mr. Bhusan Nepal, Legal Aid Counsel for respondent nos. 7 & 8.

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Date of hearing : 09.11.2022

Date of Judgment : 02.12.2022

## **J U D G M E N T**

**Bhaskar Raj Pradhan, J.**

**1.** The petitioners challenge the tender process and seek quashing of the bid opening summary dated 14.03.2022 and eight work orders bearing Memo Nos. 1 to 8/WO/JJM/BAC/NDK/2021-22 all dated 29.03.2022 (work orders) awarded in favour of respondent nos. 6, 7 and 8 by the State-respondents after the decision of the Gram Sabha of Gnathang Gram Panchayat Unit headed by the respondent no.5 (the Panchayat Sabhapati) in its meeting held on 14.03.2022 on the ground that he favoured them as they were his relatives. The petitioners also seek re-tender of all the works.

**2.** These work orders relate to Rural Water Supply Schemes at Changu, Chipsu, Thegu, Yakla, Sherathang, Kupup and Gnathang.

**3.** According to the petitioners, the petitioner nos. 1, 2 and 3 are eligible Grade-IV contractors residing in

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Gnathang GPU and the petitioner no.4 is a Grade-II contractor and a former Panchayat of Gnathang GPU. The petitioners alleged that the Panchayat Sabhapati was related to respondent nos. 6, 7 and 8 who ultimately were awarded the tenders by an arbitrary, illegal and malafide process.

**4.** It is the specific allegation of the petitioners that the Panchayat Sabhapati conducted a closed tender process, failed to give wide publicity to the Notice Inviting Tender (NIT), ensured that very little time was available to prospective bidders to participate, conducted the Panchayat Gram Sabha as its Sabhapati although he was fully aware that the bidders who participated in the tenders were all his close relatives and granted the tenders to them i.e. the respondent nos. 6, 7 and 8 in complete disregard to all settled principles of law governing tenders. It is the further case of the petitioners that the respondent nos. 6, 7 and 8 bid in the tender process for the 8 tenders in such a manner that ensured that the three of them would get one tender or the other and no other. Further, it is also their case that the respondent nos. 6, 7 and 8 participated in tenders pertaining to wards they did not belong to with the active involvement of the Panchayat Sabhapati in

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violation of the Sikkim Public Works Manual, 2009 as amended in the year 2018.

**5.** The State-respondents as well as respondent nos. 6, 7 and 8 vehemently object to the examination of the merits of the case on the ground that the petitioners did not have the *locus standi* to challenge the tender process as they did not participate. They also submit that there was considerable delay in the petitioners approaching this Court due to which work orders have been issued in favour of respondent nos. 6, 7 and 8 creating third party rights. While the State-respondents plead that the cement oriented works have since been completed except for laying of High Density Polyethylene Pipes (HDPE Pipes) it is the stand of the respondent no. 6 that he has completed 85% of the works; respondent no. 7 that she has completed 60% of the works; and respondent no.8 that he has completed 50% of the work. It is the specific stand of the State-respondents that there is no law which requires the Panchayat Sabhapati to recues himself from participating in the tender process merely because the respondent nos. 6, 7 and 8-the successful bidders were his relatives. It is their stand that since the Rural Water Supply Scheme is Jal Jiwan Mission, the Sikkim Public Works Manual, 2009 is not strictly applicable and they are governed by the

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Implementation Manual for Gram Panchayat Development Plan issued by the Rural Management and Development Department (the Implementation Manual). It is urged that the Jal Jiwan Mission is a laudable mission to provide every household in villages to have functional household taps by the year 2024 and to supply them with potable water in adequate quantity and therefore, interference by the writ court would hamper the process. It is also urged that as it was a time bound mission to be completed within six months, public interest must prevail and the writ petition ought to be dismissed.

**6.** Mr. Karma Thinlay Namgyal, learned Senior Advocate for the petitioners while placing the facts as narrated above, submitted that the entire tender process was a sham and ought to be quashed. He relied upon the judgment of the Andhra Pradesh High Court in ***M/s Tata Power Renewable Energy vs. Union of India***<sup>1</sup> to submit that physical or personal or economic injury may give rise to civil or criminal action but violation of law either by ignoring or affronting individual or action of the executive in disregard of provision of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either

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<sup>1</sup> judgment of dated 17.06.2021 in W.P. No.674 of 2021

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for individual or community in general to approach by a way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of *locus standi*. The judgment of the Supreme Court in **Gadde Venkateshware Rao vs. Government of Andhra Pradesh**<sup>2</sup> and **Dr. Sathya Narayan Sinha vs. S. Lal and Company**<sup>3</sup> was cited to clarify that persons other than those claiming fundamental rights can also approach the writ court seeking relief under Article 226. He relied upon the Supreme Court judgment in **Calcutta Gas Company vs. State of West Bengal**<sup>4</sup> to submit that the rule of standing can be relaxed in certain writs. He also relied upon the judgment of the Supreme Court in **State of Orissa vs. Ram Chandra Dev**<sup>5</sup> and submitted that under Article 227 of the Constitution the jurisdiction of the High Court is undoubtedly very wide and appropriate writs can be issued even for purposes other than enforcement of fundamental rights.

**7.** Dr. Doma T. Bhutia, appearing as the learned Additional Advocate General for the State-respondents and as a Senior Counsel for the Panchayat Sabhapati relied upon the judgment of the Supreme Court in **N.G. Projects**

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<sup>2</sup> (AIR) 1966 SC 828

<sup>3</sup> (1973) 3 SCC 693

<sup>4</sup> (AIR) 1962 SC 1044

<sup>5</sup> (AIR) 1964 SC 685

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*Limited vs. Vinod Kumar Jain*<sup>6</sup> and submitted that even if the Court finds there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages.

**8.** Dr. Doma T. Bhutia also relied upon the judgment of the Supreme Court in *Bharat Coking Coal Ltd. vs. Amr Dev Prabha*<sup>7</sup> and submitted that the Constitutional Courts are concerned only with lawlessness of a decision, and not its soundness. The Courts ought not to sit in appeal over decisions of executive authorities or instrumentalities and plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that constitutional separation of powers is not encroached upon. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

**9.** Citing another judgment of the Supreme Court in *State of M.P. vs. Nandlal Jaiswal*<sup>8</sup> Dr. Doma T. Bhutia submitted that due to inordinate and unexplained delay in filing writ petition resulting in creation of third party rights

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<sup>6</sup> (2022) 6 SCC 127

<sup>7</sup> (2020) 16 SCC 759

<sup>8</sup> (1986) 4 SCC 566



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in favour of respondent nos. 6, 7 and 8 the writ petition should be dismissed.

**10.** Mr. Zangpo Sherpa, learned counsel for the respondent no. 6 while supplementing the arguments made by the State-respondents cited the Supreme Court judgment in ***National Highway Authority of India vs. Gwalior-Jhansi Expressway Ltd.***<sup>9</sup> and of the Calcutta High Court in ***Subir Ghosh vs. State of West Bengal***<sup>10</sup> and ***Praxair India Pvt. Ltd. vs. Central Vigilance Commissioner***<sup>11</sup> to impress upon this Court that as the petitioners had failed to participate in the tender process they cannot be permitted to challenge the award of tender in favour of the respondent nos. 6, 7 and 8.

**11.** As the respondents have vehemently argued that the petitioners had no *locus standi* and therefore, this Court ought not to consider their case on merits, the issue is taken up first.

**12.** The petitioners have approached this Court seeking to have the tender process quashed pleading that the State-respondents in connivance with respondent nos. 6, 7 and 8 have conducted the tender process in ex-facie illegal, arbitrary and unconstitutional manner ultimately awarding

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<sup>9</sup> (2018) 8 SCC 243

<sup>10</sup> 2020 SCC OnLine Cal. 2213

<sup>11</sup> 2022 SCC OnLine Cal. 466

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the tenders in favour of the chosen bidders. It is asserted that the entire procedure followed by the State-respondents from the time of calling the NIT till the passing of the work order is nothing but a farce, stage managed by the Panchayat Sabhapati whose real intent was not to have competitive bids or the best offers but to exclude the genuine bidders and grant the tenders in favour of his relatives. It is also specifically pleaded by the petitioners that by such a tender process their fundamental rights have been violated. It is pleaded that the petitioner nos. 1, 2 and 3 are eligible Grade-IV contractors residing within Gnathang Gram Panchayat Unit (GPU) and that the petitioner no.4 is a Grade-II contractor and a former Panchayat of the Gnathang GPU. The petitioners specifically alleged the close relationship between the Panchayat Sabhapati and the respondent nos. 6, 7 and 8 which is not contested by them. It is not only specifically pleaded but it is also borne from the records that: (i) the NIT did not specify that only Grade-IV contractors of the ward could participate in the tender although that was the mandate of the Sikkim Public Works Manual, 2009 as well as the direction of the concerned Assistant Engineer in his memo dated 25.02.2022; (ii) the NIT was published only on 08.03.2022 although the Assistant Engineer directed the

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Panchayat Sabhapati to do so on 25.02.2022; the NIT published on 08.03.2022 provided only two days thereafter, to purchase the tender forms and three days thereafter to submit the tender; (iii) the memo dated 02.03.2022 of the Panchayat Sabhapati to the Sikkim Herald was physically taken by one Gyatso Bhutia, the Panchayat Sabhapati's brother and father of respondent no.6-one of the successful bidders. He is also the same person seen in the photograph filed by the Panchayat Sabhapati to show the tender process.

**13.** The facts in *National Highway Authority of India* (supra) were different than the one before this Court. The Supreme Court had held that only the persons who participated in the tender process pursuant to a tender notice can be allowed to make a grievance about the non-fulfilment or breach of any of the terms and conditions of the tender documents. In the case before this court the petitioners specifically plead that due to the illegal tender process eligible bidders were kept out from participating in it. Further, the petitioners do not seek to challenge the terms and conditions of the tender documents but it is their case that the Panchayat Sabhapati did not follow the mandate of the Sikkim Public Works Manual, 2009 as well as the instructions of the Assistant Engineer in his memos. In the

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present case there is specific allegations of connivance between the Panchayat Sabhapati and his relative who were awarded the tenders i.e. respondent nos. 6,7 and 8; favouritism by the Panchayat Sabhapati; his malafide acts; and the tender process being stage managed to ultimately grant the tenders to respondent nos. 6, 7 and 8 without allowing anybody else to participate in the eight tenders. Nevertheless it must be noted that the Supreme Court clearly held that the objective of the tender is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers which is apparently not done in the tenders in issue. Similarly, the facts in **Subhir Ghosh** (supra) and **Praxair India Private Limited** (supra) are also distinguishable from the facts of the present case.

**14.** In **Airport Authority of India vs. Central for Aviation Policy, Safety & Research (CAPSR)**<sup>12</sup> relied upon by Mr. Zangpo Sherpa the Supreme Court noted that none of the GHA's who participated at the tender process and/or could have participated in the tender process have challenged the tender condition. In the present case the petitioner alleged that the illegal tender process adopted by the State-respondents as well as the Panchayat Sabhapati ensured

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<sup>12</sup> 2022 SCC OnLine SC 1334

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that eligible bidders had been kept out. Therefore, it could very well be that had the petitioners not been kept out in the manner alleged, they could have participated in the tender process. It is averred that the petitioner no.1 and 3 belong to the Gnathang ward and the petitioner no.2 to the Yakla Sherathang ward and all of them were Grade-IV contractors. According to the Petitioner No.4 he is a Grade-II contractor so he may not have been eligible. It is however, evident that the petitioner nos. 1, 2 and 3 at least did have the *locus standi* to bring the present action before this Court.

**15.** At this juncture it would be relevant to state certain facts borne from the records placed before this Court. The Sikkim Public Works Manual, 2009 was brought into force from 11.09.2009 and made applicable to all works departments where the Government has approved establishment of Civil Engineering Cells/Wings. The Government Departments/Agencies as well as private sector undertakings are expected to adhere to the provisions thereof as per the preface. The memos were issued by the concerned Assistant Engineer of the Block Administrative Centre (BAC), Nandok on 25.02.2022 to the Panchayat President informing him that the Rural Water Supply Scheme Works for Changu, Chipsu, Thegu, Yakla,

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Sherathang, Kupup, Gnathang and Dzaluk wards under the Gnathang GPU had been sanctioned and approved by the Government. The memos required the Panchayat Sabhapati to call for the tender and award the work to appropriate class of contractors. The memos drew the attention of the Panchayat Sabhapati to Notification dated 08.10.2018 (2018 notification) amending the Sikkim Public Works Manual, 2009 to the effect that only Class-IV contractors enlisted with the Sikkim Public Works Department (SPWD) could compete within the territorial jurisdiction of the concerned ward of the GPU/Urban Local Bodies (ULB) where the work is to be executed for all contracts up to Rs.1 crore. The memos further required that the Panchayat Sabhapati should publish the NIT in three local dailies. The Panchayat Sabhapati on receipt of the memos dated 25.02.2022 issued memo dated 02.03.2022 to the Sikkim Herald for publication of the NIT. This memo dated 02.03.2022 was hand delivered by one Gyatso Bhutia, brother of the Panchayat Sabhapati and the father of respondent no.6 one of the successful bidders. The signature and the phone number of Gyatso Bhutia endorsed in the memo dated 02.03.2022 also reflects what the petitioners allege is true. Besides these facts are also admitted by the State-respondents. The NIT was however,

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published on 08.03.2022 in Sikkim Herald only and it provided just two days time thereafter, to the prospective bidders to purchase the tender forms and three days thereafter, to submit the tender forms. Although the State Government plead that they had put up the NIT in the BAC and Gram Parishad Kendra (GPK) on 28.02.2022 there is no averment that they did so in the wards as required even by the Implementation Manual. The learned Senior Counsel for the petitioners submits that the BAC and GPK offices are away from the concerned wards. The State-respondents plea that 15 days time was given till the opening of the tender to perspective bidders from the date they put up the NIT in the notice board of the GPK office and at the Village Administrative Centre would be of little relevance as the NIT was published in the Sikkim Herald only on 08.03.2022. The undated comparative statements in the letter head of the Village Administrative Centre of the Gnathang Gram Panchayat Unit signed by the Panchayat Sabhapati, the Block Development Officer i.e. the respondent no.4, the Assistant Engineer and the Panchayat Sachiva of all the eight tenders reflect that only respondent nos. 6, 7 and 8 participated in all the tenders which were opened on 14.03.2022. Further it is also seen that the respondent no.6 who belonged to Kupup ward secured

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three tenders of Changu ward, two tenders for Yakla ward and one tender for Gnathang ward. Similarly, respondent nos.7 and 8 who belonged to the Kupup and Dzuluk wards respectively participated in all other tenders for wards they did not belong to. It is also seen that the comparative statements of RWSS at Tsangu / Changu, Chipsu, Yakla, Sherathang, Gnathang recommended the award of work in favour of respondent no.6 at par. It is noted that the respondent nos. 7 and 8 in these tenders had bid certain percentages above. Similarly, the comparative statement of RWSS at Dzaluk recommends the award of work to respondent no.8 at par while the respondent nos. 6 and 7 had bid certain pe above. In the comparative statement of RWSS at Kupup it is seen that the respondent no.7 who bid at par was recommended for award of work and the respondent nos. 6 and 8 had similarly bid certain percentages above. Thereafter, work orders were issued by the Assistant Engineer in favour of respondent nos. 6, 7 and 8. The petitioner no. 4 made an application before the State Public Information Officer (SPIO) on 10.05.2022 seeking certain information regarding the tender process obtained the same and thereafter, issued legal notice dated 21.06.2022 to the State - respondents as



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well as the Panchayat Sabhapati. The writ petition was filed on 05.07.2022.

**16.** On these facts the respondents pleads that writ petition should not be allowed as the petitioners approached the Court belatedly and third party rights have already been created in favour of respondent nos. 6, 7 and 8.

**17.** It is settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay which is not satisfactorily explained the High Court may decline to intervene [see *Nandalal Jaiswal* (supra)]. In *Ramana Dayaram Shetty vs. International Airport Authority of India*<sup>13</sup> even though the State action was held to be unconstitutional as being violating of Article 14 of the Constitution, the Supreme Court refused to grant relief to the petitioner on the ground that the writ petition was filed more than five months after the acceptance of the tender by which time the successful tender had already incurred considerable expenditure. The Supreme Court however, also held that rule of laches of delay is not a rigid rule

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<sup>13</sup> (1979) 3 SCC 489

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which can be cast in a straight jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner.

**18.** In *N.G. Projects Limited* (supra) the Supreme Court examined an appeal against an order of the Division Bench of the High Court whereby the appeal filed by the State against the order of the Single Bench allowing the writ petition was dismissed. The issue pertained to the format of the bank guarantee as prescribed and certain other defects. The technical evaluation led to the rejection of the bid of 13 out of 15 bidders including the respondent no.1 who filed the writ petition. The Supreme Court found that the interference in contract awarded to the appellant was unwarranted and caused loss to public interest on the given facts. The Supreme Court noted that the learned Single Bench and the Division Bench of the High Court were exercising power of judicial review to find out whether the decision of the State was manifestly arbitrarily or unjust as laid down by the Supreme Court in *Tata Cellular vs. Union of India*<sup>14</sup>. The Supreme Court held that since the construction of road is an infrastructures project the intent of the legislature under section 41(ha) of the Specific Relief

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<sup>14</sup> (1994) 6 SCC 651

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Act, 1963 should be kept in mind and the project not stayed. It was on these facts that the Supreme Court held as above.

**19.** In *Jai Bholenath Construction vs. The Chief Executive Officer, Zilla Parishad, Nanded*<sup>15</sup> the Supreme Court examined an appeal against an order dated 30.03.2022 passed by the High Court of Judicature at Bombay, Bench at Aurangabad dismissing the writ petition relying upon the judgment in *N. G. Project* (supra). A tender had been published inviting offers for construction of staff quarters of the primary health centre. Four bidders participated in it including the appellant and the respondent no.4 therein. The appellant was found to be the lowest bidder but the letter of intent was not issued to the appellant. The bid of the respondent no.4 was subsequently accepted which was challenged in a writ petition by the appellant. The High Court dismissed the writ petition relying upon the judgment in *N.G. Project* (supra) as stated above. The Supreme Court held that the High Court had totally misread the judgment in *N. G. Project* (supra). The Supreme Court noted that the respondent no.4 was declared eligible in flagrant violation of the principles of natural justice and all fairness in the process of determining the eligibility of

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<sup>15</sup> Order dated 18.05.2022 Civil Appeal No.4140 of 2022

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the tenderers. The bid of the respondent no.4 was accepted when at the time of opening of technical bids, the said respondent was disqualified. It was held that therefore, the manner in which the bid had been accepted, showed arbitrary exercise of power. Consequently, the order dismissing the writ petition passed by the High Court was set aside and the Zilla Parishad was directed to process the matter further from the stage prior to issuance of corrigendum dated 24.11.2021. The facts of the present case before this Court are even grosser.

**20.** In *Tata Cellular* (supra) the Supreme Court held that the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. Right to choose cannot be considered to be an arbitrary power. If the said power is exercised for collateral purpose the exercise of that power will be struck down. The duty of the Court is to confine itself to the question of legality. Its concern should be whether a decision making authority exceeded its power; committed an error of law, committed a breach of the rules of natural justice, reached a decision which no tribunal would have reached or, abused its powers.

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**21.** In *Jagdish Mandal vs. State of Orissa*<sup>16</sup> the Supreme Court held that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether the choice or decision is made lawfully and not to check whether choice or decision is sound. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bonafide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of the public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountain out of molehills of some technical,

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<sup>16</sup> (2007) 14 SCC 517

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procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

- (i) Whether the process adopted or decision made by the authority is malafide or intended to favour someone;

or

- (ii) whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached';
- (iii) whether public interest is affected.
- If the answers are in the negative, there should be no interference under Article 226.

**22.** From the conspectus of the decision of the Supreme Court it is quite clear that in contractual matters which involves public interest, like the tenders in issue, writ courts should normally not interfere unless it is intended to prevent arbitrariness, irrationality, unreasonableness, bias, malafides, favouritism and if the decision of the authority

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in question is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.

**23.** Except for a bald assertion in the counter affidavit, the State-respondents has not placed anything to even remotely suggest that the Sikkim Public Works Manual, 2009 was not applicable for the tenders in issue. In fact contemporaneous document i.e. the memos issued by the concerned Assistant Engineer reflects that the Sikkim Public Works Manual, 2009 was applicable and he desired that the Panchayat Sabhapati to follow it. The Sikkim Public Works Manual, 2009 also makes it applicable to the eight tenders. The 2018 notification which mandated that only eligible contractors of the respective wards of the Gram Panchayat Unit could participate in the tender was violated and respondent nos. 6, 7 and 8 participated in the tenders floated for wards they did not belong to as well. The State-respondents assertion that there is no bar for Class IV contractors of the same GPU to participate is in the teeth of the 2018 notification and the directions of the concerned Assistant Engineer in his memos. The State-respondents argument that the Panchayat Sabhapati allowed the tenderers from outside the ward but still from the same GPU in the interest of the villagers and to expedite the work

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is in ignorance of the mandate of the 2018 notification which could not have been watered down by the Gram Sabha. The NIT was neither given wide publicity nor the process done in an open and transparent manner as required by clause 11.1 of the Sikkim Public Works Manual, 2009. According to the State-respondents as well as the Panchayat Sabhapati the NIT was published only in Sikkim Herald and displayed in the BAC and GPK. There is no pleading that the NIT was sent to the Information and Public Relation Department for its publicity through the Press and Media as required by clause 11.2 thereof. Clause 11.1 and 11.2 reads as follows:

**“11.1** *Wide publicity should be given to the Notice Inviting Tenders. Tenders must be invited in the most open and transparent manner possible by advertisement in Sikkim Herald and other National and Local papers, and by notice pasted in public places and duly hosting in the Departmental Website. A copy of the notice should also be sent to the District Collector, Sub-Divisional Magistrate, Block Development Officer and PRIs/Municipality located at the station of the work for wide publicity E-tendering also be resorted to for inviting wider and transparent competitions amongst tenderers.*

**11.2** *Advertisement for Notice Inviting Tenders should be sent to the Information and Public Relations Department for dissemination through the press media. Request for release of advertisement should be sent well in advance and a watch should be kept on publication of the advertisement. Copies of publication of the advertisement should be collected and kept on record as a proof of publicity actually. Full details of the date on which the advertisement actually appeared in the news papers should be indicated while sending cases to the higher officers.”*



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**24.** The Implementation Manual also required that the NIT be given wide publicity. The technical reports for augmentation of RWSS for the various wards under the Gnathang GPU filed by the State-respondents reflects that they could have executed the work either by a process of tender or by executing it departmentally. As is apparent the State-respondents chose to follow the tender mode. Having done so it was incumbent upon the State-respondents as well as the Panchayat Sabhapati to have followed the settled principles governing the tender process. Publishing the NIT only in Sikkim Herald having limited circulation and that too in such a clandestine manner would definitely not suffice. The plea of the State-respondents that they merely followed the note appended to the memos of the Assistant Engineer which said that it is mandatory to publish the NIT in Sikkim Herald or any other three daily newspapers is clearly an escape route as the memo had directed the Panchayat Sabhapati to publish the NIT in at least three local dailies which was in line with the Sikkim Public Works Manual, 2009.

**25.** The records also reveal that the tender process was conducted by the Panchayat Sabhapati in a clandestine manner. The Panchayat Sabhapati quite evidently ensured that very few learnt about the NIT. The publication of the

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NIT only on 08.03.2022 when he was informed about it on 25.02.2022 itself and giving just two days time to purchase the tender forms and three days thereafter, to submit the tenders that too without giving it wide publicity was definitely a malafide act of the Panchayat Sabhapati to ensure that only respondent nos. 6, 7 and 8 - the chosen relatives could bid in all the tenders that were floated. The comparative statements prepared under the signature of the Panchayat Sabhapati and others reflect this sordid truth. The eight comparative statements reflect the participation of only the respondent nos. 6, 7 and 8. The eight comparative statements also reflect the concerted bidding pattern ensuring that each one of them would be awarded some tender or the other. The relationship between the Panchayat Sabhapati and the respondent nos. 6, 7 and 8 has been clearly spelt out by the petitioners in their pleadings. The respondent nos. 6, 7 and 8 have not denied the relationship. The State-respondents however, support the participation of respondent nos. 6, 7 and 8 in the tenders and question why should they not be allowed to participate in the tender process for their livelihood and further why should the Panchayat Sabhapati recuse merely because respondent nos. 6, 7 and 8-his relatives participated in the tenders. The decision to award the

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tenders to the respondent nos. 6, 7 and 8, as pleaded by the State-respondents, was taken in the meeting of the Gnathang Gram Panchayat on 14.03.2022 in which out of the five signatories, the Panchayat Sabhapati participated as its President. Section 20 of the Sikkim Panchayat Act, 1993 which came into force on 10.08.1995 and applicable to the proceedings of the Gram Panchayat would be relevant.

**26.** Section 20 (6) and (7) provides:

*“6. No member shall vote on, and take part in the discussion on any question coming up for consideration at a meeting of a Gram Panchayat if the question is one in which he has any direct or indirect pecuniary interest other than an interest as a member of public.*

*7. If it appears to any member present at a meeting that the person presiding at the meeting has any such pecuniary interest in any matter before the meeting for discussion or any question coming up for consideration as referred to in sub-section (6) and a motion brought by him to that effect is carried, such a person shall not preside at such meeting and shall not take part therein, and for the purpose of sub-section (4) such person shall be deemed to be absent during the discussion or consideration of the particular matter.”*

**27.** A perusal of section 20 (6) and (7) makes it clear that the Panchayat Sabhapati could not have participated in the meeting of the Gram Panchayat since he had either a direct or definitely an indirect pecuniary interest in the discussion whether to award the tenders to respondent nos. 6, 7 and 8 or not was to come up. According to the petitioners the relationship between the Panchayat Sabhapati and

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respondent nos. 6, 7 and 8 was as follows. Respondent no. 6 was the Panchayat Sabhapati's nephew, respondent no.7 was the Panchayat Sabhapati's sister-in-law and respondent no.8 was his cousin. Gyatso Bhutia who carried the Panchayat Sabhapati memo dated 02.03.2022 to the Sikkim Herald for the publication of the NIT was the Panchayat Sabhapati's brother and the father of respondent no.6. Gyatso Bhutia was also the person who is seen in the photograph submitting the tender form filed by the Panchayat Sabhapati along with the minutes of the meeting of Gnathang GPU dated 14.03.2022 to show the tender process. These allegations specifically made by the petitioners have not been denied by the respondents making the sordid story absolutely clear. The tender process conducted in the Gnathang GPU for the eight tenders was a charade and a sham. In such a gross and perverse fact situation it would not be correct to hold that third party rights have been created in favour of respondent nos. 6, 7 and 8 who procured the tenders illegally and this Court is powerless to interfere and correct the illegality.

**28.** Although the State-respondents submit that the tenders were to be completed within six months it is noticed that in fact the works are incomplete.

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**29.** The submissions by the learned counsel for the respondents that the court is precluded from examining various legal issues as the petitioners did not plead them specifically in the writ petition is not correct. Specific facts required to permit this Court to examine the issues arising therefrom, both factual and legal, are available in the writ petition, the documents annexed thereto as well as from the pleadings and documents filed by the respondents.

**30.** According to the Panchayat Sabhapati the petitioners have filed a false and frivolous case to extract money from the contractors which is a routine practice. It is further alleged that when the Panchayat Sabhapati was the Vice President, the work of beautification of Changu and Hangu Lakes were taken up. At that time the petitioners did not participate in the tender process but filed a false case and blackmailed the Panchayat. It is further alleged that the petitioners had extracted an amount of Rs.15 lakhs from one contractor Sonam Gyatso Bhutia. The Panchayat Sabhapati however, has not provided any evidence or material to support the contentions which have been specifically denied by the petitioners in their rejoinder. It is stated by the petitioners that the allegations are fabricated and false and they reserve their right to take appropriate action. It is further stated that in the period when the

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Panchayat Sabhapati alleges that the petitioners had extracted the money from Sonam Gyatso Bhutia, the petitioner no.1 had not even completed his college education and did not have his contractor enlistment and therefore, the allegation made is devoid of merit. The respondent nos. 7 and 8 do not plead that they were blackmailed by the petitioners. The allegation made by the Panchayat Sabhapati therefore, is without any material evidence for this Court to conclude either way. Under the circumstances the allegation cannot be taken against the petitioners.

**31.** The explanation given by the State-respondents as well as the Panchayat Sabhapati that the contractors of the concerned ward did not participate in the bidding process and due to urgency the Gram Panchayat Unit in consultation among themselves unanimously agreed to issue the work order in the name of the successful bidders i.e. respondent nos. 6, 7 and 8 is also patently incorrect. According to the NIT the last date of submission of tender was 14.03.2022. However, the submission of the tenders ought to have been before the preparation of the comparative statement and thereafter its consideration by the Gram Sabha. The comparative statements however reflect the participation of respondent nos. 6, 7 and 8 in all

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the tenders including those for the wards they did not belong to. The minutes of the meeting held on 14.03.2022 by the Gnathang Gram Panchayat does not also reflect that the respondent nos. 6, 7 and 8 were allowed to participate in the tenders of the wards they did not belong to as no one from those wards participated as alleged. The purported no objection certificate of the Gnathang GPU produced by the State-respondents in their counter affidavit state that no contractors from Changu, Yakla-Sherathang and Gnathang ward were present till the closing time and therefore, the Gnathang GPU have no objection in the tender process. The no objection certificate therefore, also do not contain any statement which reflects that: firstly, the respondent nos. 6, 7 and 8 sought to participate in the tenders for the wards they did not belong to; and secondly, the Gram Sabha considered their plea and took the decision to allow them to do so. Quite obviously the no objection certificate is also an afterthought. Fundamentally the decision of such a nature ought to be taken by the Government by amending the Sikkim Public Works Manual, 2009 as amended by 2018 notification and not the Panchayat Sabhapati or for that matter even the Gram Sabha. The question that begs the answer is: how did the respondent nos. 6, 7 and 8 know beforehand that no one else would participate and

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that they would be permitted to do so before preparing the tender documents for submission? Further, when the NIT did not specify the requirement of the 2018 notification mandating that only eligible tenderers of the respective wards could participate what was the need for the Panchayat Gram Sabha to issue the no objection? Obviously, the process was predetermined.

**32.** The learned Counsel for the respondents also resisted the writ petition on the ground of delay and laches. The petitioners plead that the entire tender process was conducted in secrecy to exclude the genuine bidders in participating in the tenders. The records also reveal the fact. Although the petitioners do not state as to when exactly they learnt about the tender process it is quite clear that the petitioner no.4 learnt about the same when he filed the application under the Right to Information Act, 2005 before the SPIO, Rural Management and Development Department on 10.05.2022. The issuance of legal notice dated 21.06.2022 on behalf of the petitioners also makes it clear that at least prior to 21.06.2022 the petitioner nos. 2, 3 and 4 were also aware. The writ petition was filed on 05.07.2022. Therefore, if this Court was to take the date of publication of the NIT on 08.03.2022 as the date of knowledge of the petitioner also then there would be a



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delay of around four months. The specific assertion that Sikkim Herald is a weekly edition published only on Tuesday has not been specifically denied by the State-respondents. If therefore, this Court considers the date of knowledge of the petitioners as the date of the RTI application then it would be only two months. As held by the Supreme Court in **Ramana Dayaram Shetty** (supra) this is a case where despite delay this Court must necessarily exercise its discretion and interfere. It is a case which shocks the judicial conscience of this Court. The State is a welfare State and governed by the rule of law. As held by the Supreme Court it cannot arrogate itself to a status beyond what is provided by the Constitution. When the State seeks to suppress the flagrant violation of all constitutional norms by the Panchayat Sabhapati by shielding it on the ground of delay and latches it is the duty of the writ court to ensure that justice is done in spite of the delay.

**33.** In **Humanity & Anr. vs. State of West Bengal & Ors.**<sup>17</sup> the Supreme Court while examining a case of allotment of land by the State of West Bengal in favour of an individual opined that it had been repeatedly held by the Supreme Court that in the matter of granting largesse, the

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<sup>17</sup> (2011) 6 SCC 125

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Government has to act fairly and without any semblance of discrimination. While reiterating the law laid down by the Supreme Court in **Ramana Dayaram Shetty** (supra) it held that the Government, a welfare State, is in a position of distributing largesse in a large measure and in doing so the Government cannot act as its pleasure. It held that the dictum that the Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith still holds good.

**34.** Malafide, favouritism, bias, arbitrariness and blatant disregard to the law of the land is writ large in the actions of the Panchayat Sabhapati. The effort of the State-respondents to support such patently illegal acts of the Panchayat Sabhapati does not behove of a responsible welfare State. It is unequivocally clear that something has gone terribly wrong which is of such a nature and degree that non-interference would result in injustice. This Court is of the view that therefore, this is a fit case to mould the relief in the interest of justice.

**35.** The work orders are dated 29.03.2022. It is quite evident that certain progress has been made. However, the respondent no. 6 who was awarded five tenders merely

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state that he has completed 75% to 85% of the work without specifying which works or giving any further details. The statement of account relied upon by him reflects various payments made on the same date to him totalling to Rs.20,83,171.50/-. This statement of account also does not clear the position. The respondent no. 7 who was awarded the tender for Kupup ward states that she has completed 60% of the work. Similarly, respondent no.8 who was awarded the tender for Dzaluk ward state that he has completed only 50% of the work. The affidavits filed by the State-respondents as well as respondent nos. 6, 7 and 8 are wanting. It is felt that certain vital facts have been purposely kept out from consideration. However, the respondents claim that civil works are over and what remains is the laying of the HDPE Pipes. Keeping these facts in mind it is directed as follows:

- (i) The work orders as well as the contracts entered between the State-respondents and the respondent nos. 6, 7 and 8 are quashed.
- (ii) The State-respondents shall forthwith take up the remaining work departmentally without any further delay and for that purpose mobilize men, machinery and materials for the remaining work of the eight tenders.
- (iii) The works shall be completed as soon as possible since the timeline envisaged is since over and the beneficiary of these

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tenders must get the fruit of the works at the earliest.

- (iv) The State-Government shall forthwith constitute a committee of senior officers and experts to oversee the completion of the works and to ensure that the works have been done properly.
- (v) The State Government shall investigate the tender process for the eight tenders by a high level committee consisting of Senior Officers of the Government headed by a Vigilance Officer at the level of Director General of Police which shall submit a report to the Chief Secretary within a period of six months from the date of this judgment fixing the responsibility on persons responsible for the illegal acts.
- (vi) After doing so the State-Government shall realise the monies expended from those responsible after due process of law.
- (vii) The petitioner nos. 1, 2 and 3 shall be at liberty to seek damages for their wrongful exclusion from the tender process before an appropriate forum.

**36.** This is a fit case in which costs should also be imposed. The cost is quantified at Rs. 1 lakh jointly payable by the respondents. The writ petition is allowed and disposed of with the above directions. The pending application stands disposed of.

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**37.** A copy of this judgment shall be forwarded to the Chief Secretary, Government of Sikkim for compliance and necessary remedial measures.

**( Bhaskar Raj Pradhan )**  
**Judge**

Approved for reporting : **Yes**  
Internet : **Yes**  
to/