

**IN THE HIGH COURT OF SIKKIM
CIVIL APPELLATE JURISDICTION**

W.A. No.02 OF 2023

1. State of Sikkim
through The Chief Secretary,
Government of Sikkim
Tashiling Secretariat,
Gangtok, East Sikkim,
Pin No. 737101
2. The Commissioner-cum-Secretary,
Rural Management Development Department
Government of Sikkim,
Gram Vikash Bhawan,
Gangtok, East Sikkim,
Pin No.737101
3. The Divisional Engineer,
East District Zilla Panchayat,
Rural Development Department,
DAC-Sichey, East Sikkim,
Pin No. 737101
4. Block Development Officer,
Block Administrative Center,
Nandok, East Sikkim,
Pin No. 737102.
5. Panchayat President,
15-Gnathang, Gram Panchayat Unit,
Panchayat Office Near Jubilant School,
Old SNT Complex Chandmari,
Gangtok, Pin No. 737103.
Through Mr. Lobsang Penzor Bhutia,
S/o Late Tenzing Ongda Bhutia

.....Appellants

-VERSUS-

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.

..... Respondents

5. Mr. Tenzing Thinlay Bhutia,
S/o Sonam Gyatso Bhutia,
R/o Kupup, J. N. Road, Gangtok,
East Sikkim, Pin No. 737102.

6. Mrs. Yangden Bhutia,
W/o Kesang Bhutia,
R/o Chandmari Gangtok,
East Sikkim, Pin No. 737102.

7. Mr. Sherap Sangpo Bhutia,
S/o Tsultrim Bhutia,
R/o Zaluk, R.N. Road, East Sikkim,
Pin No. 737102.

.....Proforma Respondents

For Appellants : Dr. Doma T. Bhutia, Senior Advocate and
Addl. Advocate General with Mr. S.K.
Chettri and Mr. Yadev Sharma, Govt.
Advocates and Mr. Sujan Sunwar, Asst.
Govt. Advocate.

For Respondents : Mr. Karma Thinlay, Senior Advocate with
No. 1 to 4 Mr. Yashir N. Tamang, Advocate.

For Respondents : None appears.
No. 5 to 7

Date: 23/02/2023

CORAM:

**HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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J U D G E M E N T: (per the Hon'ble, the Chief Justice)

This intra-Court Mandamus Appeal arises in respect of a judgment and order dated 02nd December, 2022, passed by a learned Single Judge

in W.P. (C) No. 34 of 2022 (Mr. Sonam Tsewang Bhutia & Others vs. State of Sikkim through the Chief Secretary & Others). By the impugned judgment and order, the learned Single Judge while allowing the writ petition filed by four individuals, namely, (i) Mr. Sonam Tsewang Bhutia, (ii) Mr. Jigme Dorjee Bhutia, (iii) Mr. Tenzing P. Bhutia and (iv) Mr. Pempa Tshering Bhutia, issued the following directions: -

- “(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 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.”

In addition to the above directions, the learned Single Judge also imposed cost quantified at Rupees one lakh jointly payable by the respondents. While disposing of the writ petition, the learned Single Judge has also issued a direction for forwarding a copy of the judgment to the Chief Secretary, Government of Sikkim, for compliance and necessary remedial measures.

This appeal has been preferred by the State of Sikkim, through its Chief Secretary, along with four others, namely, The Commissioner-cum-

Secretary, Rural Management Development Department, The Divisional Engineer, East District Zilla Panchayat, Rural Development Department, The Block Development Officer, Block Administrative Centre, Nandok, East Sikkim and The Panchayat President, 15-Gnathang, Gram Panchayat Unit, Panchayat Office, Near Jubilant School, Old SNT Complex, Chandmari, Gangtok.

The learned Additional Advocate General appears on behalf of all the appellants, being the State and its authorities as well as the Panchayat President, 15-Gnathang Gram Panchayat Unit, being the appellant no.5.

While making her submissions, the learned Additional Advocate General has drawn our attention to the directions given the learned Single Judge and submitted that even while the impugned judgment was being rendered, most of the civil work as per the impugned work orders was completed other than laying of pipes. She also submitted that the question of *locus standi* of the writ petitioners was not taken into consideration by the writ Court.

Learned advocate representing the respondents/writ petitioners, on the other hand submitted that the contractors who were awarded the work orders impugned before the learned Single Judge were related to the appellant no.5, namely, Panchayat President, 15-Gnathang Gram Panchayat Unit. One of the contractors was the nephew (respondent no.5), the other being his sister-in-law (respondent no.6) and another, his cousin (respondent no.7).

While perusing the impugned judgment together with the previous orders passed in connection with the matter, we notice that the

respondents/writ petitioners had earlier approached another Division Bench of this Court presided over by one of us (Chief Justice) on 26th August, 2022. The following observations/directions were passed by this Court on that day: -

“Considering the facts of the instant case, as stated earlier, if we restrain the concerned respondents from taking any further steps pertaining to the tender in question at this belated stage, it will tantamount to Court’s interference in stopping a public work without even considering the entire spectrum of the facts which are relevant and are required to be considered by the writ Court since the writ petition is pending before the learned Single Judge. We are of the view that the rights of the parties and the issues raised by the appellants/writ petitioners before the writ Court are yet to be finally adjudicated upon and any observation from this Court may have a binding effect before the learned Single Judge, which we are loathed to do so at this preliminary stage. We are, however, of the view that this Intra-Court Mandamus Appeal can be disposed of at this stage itself with an observation that the tendering process — which has already commenced and is about to be completed — shall abide by the result of the writ petition while keeping the point of *locus standi*, as sought to be raised by the learned Additional Advocate General as also the point of maintainability of the writ petition, open, to be decided by the learned Single Judge.

We make it clear that any observation made by us in this order shall not be construed by the parties as a decision on the rights of the parties in any manner, which shall be finally adjudicated upon by the learned Single Judge in accordance with law.

The writ appeal stands disposed of accordingly.”

We, thus, notice from a plain reading of the above that the Division Bench of this Court kept the point of *locus standi* as also the point of maintainability of the writ petition open to be decided by the learned Single Judge. The above observations/directions of the Division Bench dated 26th August, 2022, in Writ Appeal No.04 of 2022 was final and binding between the parties. In such a factual background we need to examine while dealing with this appeal, whether the directions of the Appeal Court with regard to point of *locus standi* and maintainability was actually decided by the learned Single Judge while passing the impugned judgment and order dated 2nd December, 2022.

It appears that in paragraph 11 of the impugned judgment, the learned Single Judge has recorded the submissions of the respondents with regard to the writ petitioners having no *locus standi*. Paragraph 11 of the impugned judgment is quoted hereinbelow:-

“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.”

In paragraph 14 of the impugned judgment, the learned Single Judge while referring to a judgment rendered by the Hon'ble Supreme Court in; Airport Authority of India vs. Central for Aviation Policy, Safety & Research (CAPSR) reported in; 2022 SCC OnLine SC 1334, went on to observe as follows:-

14. In Airport Authority of India vs. Central for Aviation Policy, Safety & Research (CAPSR) reported in 2022 SCC OnLine SC 1334, 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 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.

Other than the paragraph referred above, we do not find any other discussion by the learned Single Judge on the point of *locus standi* of the writ petitioners. Even on a plain reading of paragraph 14, it becomes clear that the writ petitioner no.4 (being the respondent no.4 herein) was found by the learned Single Judge of not having *locus standi* to bring the

action before the writ Court. In such a factual situation how the learned Single Judge could proceed to issue mandatory directions without even considering the maintainability of the writ petition in a scenario when all the writ petitioners had joined together to approach the writ Court based on a common cause of action, even while the writ petitioner no.4 was allowed to remain as a party to the writ proceeding, cannot be ascertained from the impugned judgment. That apart and in any event, how four individuals — all of whom had separate and individual cause of action to espouse — could have joined together and maintained a common writ petition seeking such reliefs, just because they claimed to be eligible to participate in the tendering process, does not appear in any of the discussions made by the learned Single Judge in the impugned judgment and order.

The basic challenge before the learned Single Judge was with regard to eight work orders, all dated 29th March, 2022, which were awarded in favour of the private respondent no. 5, 6 and 7 before this Court, namely, (i) Mr. Tenzing Thinlay Bhutia, (ii) Mrs. Yangden Bhutia and (iii) Mr. Sherap Sangpo Bhutia. These work orders were issued by the office of the Block Development Officer, Block Administrative Centre, Nandok, after decision of the Gram Sabha, Gnathang, Gram Panchayat Unit, headed by respondent no. 5 before the writ Court (being the appellant no. 5 herein), namely, the Panchayat Sabhapati, in its meeting held on 14th March, 2022, on the ground that he favoured the successful tenderers, all of whom were his relatives. These work orders related to Rural Water Supply Scheme (RWSS) at Changu, Yakla, Sherathang, Kupup, Gnathang, Dzuluk, Chipsu & Gnathang.

A bare perusal of the papers before us reveal that the writ petitioners no. 1, 2 and 3, were eligible Government contractors residing under Gnathang Gram Panchayat Unit, but never participated in the tendering process. So far as writ petitioner no. 4 is concerned, he was not even an eligible Government contractor since he was a Grade-2 contractor and was thus not even competent to participate in the tendering process. It also appears that the writ petitioner no. 4 was a former Panchayat, Gnathang Gram Panchayat Unit. It was the specific allegation of the writ petitioners that the Panchayat Sabhapati (being the appellant no. 5), was related to the private respondent no. 6,7 and 8 before the writ Court, namely, (i) Mr. Tenzing Thinlay Bhutia, (ii) Mrs. Yangden Bhutia and (iii) Mr. Sherap Sangpo Bhutia, who were ultimately awarded the tender by arbitrary, illegal and mala fide process. The question, therefore, that falls for consideration in the factual backdrop of the case as stated above is whether the writ Court could have proceeded to issue the seven mandatory directions as stated at the outset.

It is patently evident that none of the writ petitioners before the learned Single Judge even participated in the tendering process which culminated in issuance of the eight work orders favouring the private respondents no. 6, 7 and 8 before the writ Court, namely, (i) Mr. Tenzing Thinlay Bhutia, (ii) Mrs. Yangden Bhutia and (iii) Mr. Sherap Sangpo Bhutia. Even assuming for a moment that there was unfair process adopted by the concerned authority while issuing the eight work orders favouring relations of the appellant no. 5, being the Panchayat Sabhapati; the question is, can all the eight work orders as well as the contracts entered by the State with the three individuals, namely, (i) Mr. Tenzing Thinlay Bhutia, (ii) Mrs. Yangden Bhutia and (iii) Mr. Sherap Sangpo Bhutia, be quashed at the instance of the four individual

contractors, none of whom having even participated in the tendering process and out of whom one was not even an eligible contractor. The writ petition, being WP (C) No. 34 of 2022, not being in the nature of a Public Interest Litigation, the answer to this question, for reasons stated above, clearly lies in the negative. As such, the directions no. 1 to 4 passed by the learned Single Judge in the impugned judgment and order cannot be sustained and is liable to be set aside and is accordingly set aside.

So far as the fifth direction is concerned, we notice that the same has been passed by the learned Single Judge keeping in mind the issue of nepotism involved in respect of eight tenders in question which culminated in issuance of eight work orders favouring the private respondents no. 6, 7 and 8 before the writ Court, all of whom are said to be related to the appellant no.5. They were (i) Mr. Tenzing Thinlay Bhutia, (ii) Mrs. Yangden Bhutia and (iii) Mr. Sherap Sangpo Bhutia, who were the only participants in the tendering process. If indeed the eight tenders were awarded to relatives of the appellant no.5, namely, the Panchayat Sabhapati — even in the absence of any specific bar either in the notice inviting tender or in the tender conditions — it is a matter of some concern to this Court particularly in a scenario where only the three relatives of the appellant no.5 were awarded all the eight work orders and no one else even participated in the tendering process. We, therefore, consider it necessary — purely in public interest — to bring this matter to the notice of the Chief Secretary, Government of Sikkim, so that remedial measures and course corrections can be adopted by the State Government. While considering this issue, the Chief Secretary, Government of Sikkim, will look into the duration of the notice inviting tender in the public domain since it is submitted that eight tenders were

kept in the public domain only for two days and as such, the eligible contractors did not even get an opportunity to participate in the tendering process. The Chief Secretary, Government of Sikkim, should also consider the element of propriety — which ought to have been adopted by the appellant no.5 — even if there was no specific bar on his relations participating in the tendering process. The fifth direction of the learned Single Judge stands modified accordingly.

In view of what has been observed hereinabove, we do not find any justifiable reason to retain the sixth and seventh directions passed by the learned Single Judge, which are also liable to be set aside and stand accordingly set aside. The order as to cost, quantified at Rs.1,00,000/- (Rupees one lakh only), jointly payable by the respondents is also liable to be set aside in view of what has been observed hereinbefore.

On a conspectus of the case before us, we are of the view that the entire issue which was brought before the notice of the writ Court could have been easily avoided in the event all applicable norms laid down by the State were followed by the appellant no.5. The Chief Secretary, Government of Sikkim, shall examine this aspect also. The directions contained herein shall be complied with by the Chief Secretary as expeditiously as possible, preferably within a period of six weeks but not later than eight weeks from date.

The writ Appeal together with connected application stands disposed of accordingly.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice