

IN THE HIGH COURT OF SIKKIM

CIVIL JURISDICTION

WP(C) No.....16.....of 20..11

M/s. Tata Metaliks Kubuto Pipes Limited

Appellants (s)
Petitioner (s)

Versus

State Trading Corporation of Sikkim (STCS) & Anr.

Respondent (s)
Opposite party (s)

Appellant

For _____

Petitioner
(Advocate (s))

Mr. T. R. Barfungpa, Mr. D. K. Siwakoti and Mr.
Thinlay Bhutia


Respondent


For _____


Opposite Party
(Advocate (s))

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01.	15.04.2011	<p style="text-align: center;"><u>BEFORE</u></p> <p style="text-align: center;">HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</p> <p>Present: Mr. T. R. Barfungpa, Advocate with Mr. D. K. Siwakoti and Mr. Thinlay Dorjee Bhutia, Advocates for the petitioner.</p> <p>Mr. Karma Thinlay, Government Advocate with Ms. Subarna Rai, Advocate for the respondents.</p> <p style="text-align: center;">-----</p> <p>The petitioner in the present writ petition is a Company engaged in manufacturing and sale of Ductile Iron Pressure Pipes (in short "DI pipes") and is empanelled with the State Trading Corporation of Sikkim (in short "STCS"), the respondent no.1. It is stated that a Notice Inviting Tender (in short "NIT"), inviting sealed quotations from</p>

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		<p>producers of various materials/items including DI pipes and fittings were floated by the respondent no.1 in the Economic Times, in the first week of March, 2011, in terms of which the last date for submission of tenders was ultimately fixed on 18-04-2011. It is submitted that the petitioner's Assistant Area Manager, on application, was issued with the tender forms which initially was refused in view of the judgment dated 18-03-2011 passed by this Court in Writ Petition (C) (PIL) No.14 of 2011. Ultimately, it was issued on the condition that it shall be accepted only if the petitioner approaches this Court and obtains an order in its favour in view of the order of this Court above referred to in Writ Petition (C) (PIL) No.14 of 2011. It is also submitted that the respondent no.1 (STCS) was under the impression that the said order created an embargo upon the petitioner in participating in the NIT prompting them to issue letter dated 28-03-2011. It is stated that the petitioner fulfils all the conditions prescribed in the NIT and also had been issued with a certificate of Bureau of Indian Standard Authorities (in short "BIS") and, therefore, cannot be deprived of his right in participating in the ensuing tender process. Under such facts and circumstances, the petitioner has sought for a writ against the respondents in the nature of mandamus, directing the respondents to accept the tender forms of the petitioner and allow its participation in it having fulfilled all terms and conditions prescribed in the NIT.</p> <p>2. On consideration of the materials on record and the judgment dated 18-03-2011 in Writ Petition (C) (PIL) No.14 of 2011 and also the letter dated 28-03-2011 (Annexure P6) issued by the respondent no.2, I am of the view that the writ petition can be disposed of at this stage, as in the first instance, the writ petition appears to be quite premature as no rights of the petitioner have yet been</p>

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		<p>violated by the respondent and secondly, the letter dated 28-03-2011 appears to have been issued under a gross misconception of the judgment dated 18-03-2011 in Writ Petition (C) (PIL) No.14 of 2011.</p> <p>3. Admittedly, the tender documents are to be received by the respondent no.1 only on 18-04-2011 and, therefore, the writ petition at best may be considered as a preemptory exercise on the part of the petitioner and, therefore, obviously quite premature. On the other aspect, I have gone through the judgment. Paragraph 9 of which is relevant and is extracted below for convenience:-</p> <p>“9. Hence, without going into other merits of the case, suffice it to permit the petitioner to approach the respondent Nos. 2 and 3 by appropriate complaint raising all the contentions that raised in the present writ petition or any other grounds as deemed fit and necessary under the circumstances of the case, invoking the statutory provisions under the Act, Rules and Regulations and seek appropriate remedy before them, if they are so pleased. In the event of such complaint is made to the respondent Nos. 2 and 3 or any other competent authority prescribed under the Act, Rules and Regulations, such authority shall, after due notice to the 4th respondent in compliance with statutory provisions and principles of natural justice, hold an enquiry and take appropriate decision in the matter, independently, in accordance with law, not being influenced by the disposal of this writ petition, within 90 (ninety) days from the date of receipt of such complaint and communicate the same to 1st respondent herein. On receipt of such decision of respondent Nos. 2 and 3 or any other competent authority and the representation of the petitioner, the 1st respondent shall take appropriate decision in the matter within 60 (sixty) days from the</p>

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		<p>date of receipt of such representation of the petitioner."</p> <p>4. From the above, it is evident that the direction was issued upon the petitioner, Tikendra Sharma in that writ petition, to approach the respondent nos. 2 and 3 by appropriate complaint, raising all contentions that had been raised in the writ petition by invoking the statutory provisions under the Act, Rules and Regulations, seeking appropriate remedy before them. Therefore, we do not see any direction issued by this Court upon the petitioner in the present writ petition, who was the respondent no.4 in Writ Petition (C) (PIL) No.14 of 2011, in which the judgment dated 18-03-2011 had been rendered, as appears to be the impression of the respondent no.1 from the letter dated 28-03-2011 (Annexure P6). For convenience, the letter dated 28-03-2011 is reproduced below :-</p> <p style="text-align: center;">"STATE TRADING CORPORATION OF SIKKIM, DEORALI (GANGTOK) SIKKIM (Government of Sikkim Undertaking)</p> <p style="text-align: center;">.....</p> <p>Ref.No: STCS/I&S/RB/87/10-11 5606 Dated: 28th March, 2011 To M/S. Tata Metaliks Kubota Pipes Ltd., 6/1, A, Middleton Street, 1st Floor, Kolkata - 71</p> <p style="text-align: right;">Subject: Our NIT No.STCS/I&S/RB/ 87/10-11 dated 4.3.2011</p> <p>Sir,</p> <p>This corporation has received copy of the order from the Hon'ble High Court of Sikkim, at Gangtok in the matter of Tikendra Sharma v/s. State of Sikkim and others (Writ Petition (C) No.14 of 2011). As per the order copy, the Hon'ble Court has directed the Petitioner to approach BIS for appropriate action in taking decision independently on whether the DI Pipes then</p> 

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		<p>manufactured by you were devoid of prescribed standards.</p> <p>Though you have now submitted copy of the valid BIS Licence, inter-alia, other relevant company credentials, we shall appreciate if the Corporation is given copy of the application that your company may submit to the Hon'ble High Court in reply to its Order referred above. Accordingly, the Corporation would consider accepting your offer against its tender enquiry referred above.</p> <p>Thanking you,</p> <p style="text-align: right;">Sd/- Roger R. Rai (General Manager-III)"</p> <p>5. In the above circumstances, the letter obviously appears to have been issued on a mis-construction of the judgment dated 18-03-2011 and in my view, quite irrelevant and inconsequential in so far as the process of NIT presently in progress is concerned.</p> <p>6. Without observing anything further, I am of the view that at this stage, there is nothing for this Court to adjudicate but only to observe that the respondent no.1 shall carry on with the tender process in accordance with law, keeping in view the above observations.</p> <p>7. The writ petition stands disposed of accordingly.</p> <p>8. No order as to costs.</p> <div style="text-align: right;">  Judge <small>15-04-2010</small> </div> <p>Index : Yes/No</p> <p>Internet : Yes/No</p> <p>ats/ds</p>