

ITEM NO.23 Court 4 (Video Conferencing) SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11270/2021

(Arising out of impugned final judgment and order dated 22-02-2021 in WC No. 24163/2020 passed by the High Court Of Judicature At Allahabad)

GENERAL MANAGER GANGA POLLUTION CONTROL
UNIT U.P. JAL NIGAM & ANR.

Petitioner(s)

VERSUS

M/S L.R. SHARMA AND COMPANY & ANR.

Respondent(s)

(IA No.86751/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.86750/2021-EXEMPTION FROM FILING O.T.)

Date : 06-08-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Ms. Vanshaja Shukla, AOR
 Ms. Mrigna Shekhar, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The issue brought before this Court, in our opinion, *prima facie*, is a case of act of commission and omission, at some level.

The High Court has recorded that the competent officer of the Uttar Pradesh Jal Nigam (for short "Jal Nigam") was responsible to issue hydraulic pressure

testing report. However, even though the project had been completed in the year 2014 and put to use by Jal Nigam since then, requisite certificate was not being issued and that was being taken as an excuse to withhold the outstanding payment of the contractor. In that backdrop, the contractor had no other option but to approach the High Court.

The fact remains that if Jal Nigam had started using the pipeline setup by the Contractor from 2014 and has not come across any deficiency therein, what prevented the engineer of Jal Nigam to issue certificate as required under Clause 7 of the condition of the contract? That explanation is not forthcoming. Instead, Jal Nigam is maintaining its position as was taken before the High Court and now before this Court, that the payment cannot be released until hydraulic pressure testing report is produced by the contractor. If the project is not complete or is deficient in some respects, even then the engineer ought to have certified that position. That would have been a different matter.

Certainly, it seems to be a case of failure on the part of the engineer of Jal Nigam in this behalf.

Without much ado, for the time being, we call upon the Principal Secretary, Irrigation Department, Government of Uttar Pradesh to cause enquiry into the matter including on the following facts and submit report:

- (i) The date on which the contract work was completed;
- (ii) The date from which Jal Nigam started using the pipeline set up by the respondent-contractor;
- (iii) Whether the respondent-contractor had made representation to the competent authority of Jal Nigam to issue certificate/hydraulic pressure testing report and the date on which such representation was made, including the follow up steps taken by the competent authority of the Jal Nigam; and
- (iv) Whether the work completed by the contractor is in conformity with the contract terms or deficient in any manner.

This enquiry can be undertaken by the Principal Secretary through independent agency and not with the assistance of the competent authority of Jal Nigam.

The report indicating the above facts and information

and/or any other relevant information be submitted to this Court within three weeks from today. The Principal Secretary is free to take assistance of other officials of the State Government.

List this matter on 02.09.2021.

The Principal Secretary shall submit report directly to the Registry of this Court through email or through the Standing Counsel for the State of Uttar Pradesh.

Copy of this order be forwarded to the Principal Secretary, Irrigation Department, Government of Uttar Pradesh through email forthwith for information and necessary action.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)