

**Caveat Petn.No.(SH)177/2013**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

Heard Mr. VK Jindal, learned senior counsel assisted by Mr.S Jindal, learned counsel for the Caveator (respondent No.2) in the connected writ appeal.

The caveator will be heard at the time of consideration of the interim prayer, if any, in the connected revision petition.

Accordingly, the caveat stands discharged.

**JUDGE**

**JUDGE**

**Lam**

**Caveat Petn.No.(SH)178/2013**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

Heard Mr. VK Jindal, learned senior counsel assisted by Mr.S Jindal, learned counsel for the Caveator (respondent No.2) in the connected writ appeal.

The caveator will be heard at the time of consideration of the interim prayer, if any, in the connected revision petition.

Accordingly, the caveat stands discharged.

**JUDGE**

**JUDGE**

**Lam**

**Caveat Petn.176/2013**

**BEFORE  
HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

**(T.N.K. Singh,J)**

Heard Mr. VK Jindal, learned senior counsel assisted by Mr.S Jindal, learned counsel for the Caveator (respondent No.2) in the connected writ appeal.

The caveator will be heard at the time of consideration of the interim prayer, if any, in the connected revision petition.

Accordingly, the caveat stands discharged.

**JUDGE**

**JUDGE**

**Lam**

**MC No.(SH)341/2013  
In WA No.41/2013**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

In view of the order passed today in **WA No.39/2013**  
**WA No.40/2013 & WA No.41/2013**, this misc. case also stands  
disposed of.

**JUDGE**

**JUDGE**

***Lam***

**MC No.329/2013**  
**In WA No.37/2013**

**BEFORE**  
**HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,**  
**THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

**(T.N.K. Singh,J)**

In view of the order passed today in **WA No.37/2013**,  
this misc. case stands disposed of.

**JUDGE**

**JUDGE**

**Lam**

**MC No.(SH)339/2013  
In WA No.39/2013**

**BEFORE  
HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

**(T.N.K. Singh,J)**

In view of the order passed today in **WA No.39/2013**,  
this misc. case also stands disposed of.

**JUDGE**

**JUDGE**

**Lam**

**MC No.(SH)340/2013  
In WA No.40/2013**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

In view of the order passed today in **WA No.39/2013**  
**WA No.40/2013 & WA No.41/2013**, this misc. case also stands  
disposed of.

**JUDGE**

**JUDGE**

***Lam***

**MC No.(SH)342/2013  
In WP(C)No.312/2013**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

In view of the order passed today in  
***WP(C)No.312/2013***, this misc. case also stands disposed of.

**JUDGE**

**JUDGE**

***Lam***

**WA No.37/2013**  
**In WP(C)No.213/2013**

**BEFORE**  
**HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,**  
**THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

**(T.N.K. Singh,J)**

Heard Dr. ODV Ladia, learned counsel for the appellants.

This appeal is directed against the judgment and order dated 23.09.2013 passed by the learned Single Judge in WP(C)No.213/2013. We have given our anxious consideration to the judgment and order passed by the learned Single Judge.

Issue Notice returnable within four weeks.

Steps by registered post with AD with five days.

In the present circumstances, the prayer for interim is rejected.

**JUDGE**

**JUDGE**

**Lam**

WA No.6/2013

BEFORE  
HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN

01.11.2013

(T.N.K. Singh,J)

On the prayer of Mr. K Paul, learned counsel for the appellant, list this matter again on *01.12.2013*.

JUDGE

JUDGE

*Lam*

WA No.35/2012

BEFORE  
HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN

01.11.2013

(T.N.K. Singh,J)

On the prayer of Mr. K Paul, learned counsel for the appellant, list this matter again on *01.12.2013*.

JUDGE

JUDGE

*Lam*

WA No.36/2012

BEFORE  
HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN

01.11.2013

(T.N.K. Singh,J)

On the prayer of Mr. K Paul, learned counsel for the appellant, list this matter again on *01.12.2013*.

JUDGE

JUDGE

*Lam*

**BEFORE  
THE HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN**

**01.11.2013**

**(T.N.K. Singh,J)**

These three writ appeals between the same parties involving the same question of law are taken up for Admission hearing today.

The orders passed by the learned Single Judge dated 29.10.2013 in three writ petitions are similar and pari materia. For easy reference, one of the judgments and orders passed by the learned Single Judge dated 29.10.2013 is quoted hereunder:-

*"Date of Order 29<sup>th</sup> October, 2013.*

*Heard.*

- 2. By means of this writ petition, the writ petitioner has sought writ in the nature of Certiorari and/or writ in the nature of Mandamus in respect of Notice Inviting Bids dated 11-10-2013 issued by the respondent-Corporation for supply of boulders/sand from quarry centres in Jameri, Dirang and Lung (Arunachal Pradesh) to Bichom Dam (Arunachal Pradesh).*
- 3. Briefly stated the petitioner is the contractor who has been given work contract for construction of Dam in Arunachal Pradesh, by the respondent-Corporation. The copy of the agreement is filed with the writ petition. It is pleaded by the learned counsel for the writ petitioner that Notice Inviting Bids could not have been issued by the respondent-Corporation inviting third parties to transport/supply the stones and sand from the quarry site to the dam site.*
- 4. However, having considered submissions of Learned counsel for the parties, this Court is prima facie not satisfied that under the agreement between the writ petitioner and the respondent-Corporation, the respondent-Corporation was barred from inviting tenders or to make supply of the boulders/sand to the writ petitioner at the dam site. From the papers on record, it appears that after the boulders and sand could not be found out near the site of the dam, the same was required to be taken from Jameri, Dirang and Lung site. Admittedly, the petitioner was temporarily allowed to transport minerals from the above mentioned sites to the dam site, only on his request and the permission granted to*

*him has expired on 14-10-2013. It is not the case of the petitioner that respondent-Corporation would charge any payment from him for supplying boulders etc at the dam site. Simply stated the case is that it is the petitioner would demand extra charge for transportation of boulders etc at dam site, which the respondent North Eastern Electric Power Corporation Limited wants to supply free to him by incurring lesser expenditure by inviting tenders in which petitioner can also participate.*

- 5. In the above circumstances, since the writ petitioner can also participate in the bid floated by the Corporation, this Court is not inclined to interfere in the matter.*
- 6. Therefore, the writ petition is dismissed summarily.”*

In the three writ petitions, the present appellant/writ petitioner are assailing the Notice Inviting Bids (for short “NIB”) dated 11.10.2013 for transportation of the quarry materials, such as, boulders and sand from the quarry and also for unloading and stacking at the dam site. Therefore, it is clear that the impugned NIB dated 11.10.2013 involves with the contracts works for natural resources, such as, boulders and sand. The appellants/writ petitioners had been awarded two contracts work i.e. package No.II (Civil works for a Tenga Dam, River Diversion, Tenga Intake and Head Race Tunnel and also package No.III (Civil works of Head Race Tunnek, Surge Shaft, Pressure Tunnels, Power House and Tail Race Tunnels). It is an admitted case of both the parties that the said contracts works were awarded to the appellants/writ petitioners after floating the Tender Inviting Bids to the eligible bidders. Therefore, there is no dispute between the parties that the said two contracts works were awarded to the appellants/writ petitioners after floating the tenders. For the said contracts works, the appellants/writ petitioners had entered into an agreement with the respondent No.2 i.e. North Eastern Electric Power Corporation Ltd. which is a Govt. of India undertaking.

The conditions of the NIB and also the agreement between the parties for the said two contracts work are that boulders, sand and other materials are to be collected by the present appellants/writ petitioners from the quarry which would be about 500 meters from the dam site. Therefore, it is nobody’s dispute that the materials like boulders and sand are to be collected by the present appellants/writ petitioners from the quarry assigned by the respondent No.2. It is stated that because of certain difficulties on the part of the respondent No.2, the respondent No.2 could not obtain permission under Forest (Conservation) Act, 1980 for extracting or collecting the boulders and sand from the quarry which would be about 500 meters from the dam site. It also appears

that after several correspondences between the respondent No.2 and the Principal Chief Conservator of Forest, the permission from the concerned authority under the Forest (Conservation) Act, 1980 for collecting or extracting the boulders and sand from the quarry which are beyond 500 meters away from the dam site could be obtained. The permission for extracting or collecting the boulders and sand from the quarry which is situated beyond 500 meters from the dam site was granted to the present appellants/writ petitioners for a period of three months which was extended from time to time. Under the letter of the respondent No.2 dated 25.09.2013, the permission for extracting or taking out of boulders and sand from that dam which was located beyond 500 meters from the dam site was extended to the present appellants/writ petitioners only up to 14.10.2013.

It is the further case of the present appellants/writ petitioners that there is a provision for deviation in the contract agreement and also there is a condition for closure of the contract agreement. Therefore, it is the submission of Dr. A Saraf, learned senior counsel for the appellants that under the terms and conditions of the agreement for the contracts works, the respondent No.2 has the power and authority to resort to the said clause i.e. deviation clause and also for closure clause. He also further contended that instead of invoking the said clause i.e. deviation clause and closure clause, the respondents by issuing the NIB deviated the conditions of the agreement. But we are not deciding this point at this stage; it is left to be decided at the time of final hearing. It is clear from the fact that the present appellants/writ petitioners were transporting boulders and sand from the quarry and stack at the dam site. By the impugned NIB, the said works of the present appellants/writ petitioners for transportation of boulders and sand from the quarry and stacking at the site of the dam is to be entrusted to somebody by issuing the NIB. In such circumstances, this Court put a pointed question to Mr. VK Jindal, learned senior counsel for the respondent No.2 that since the present appellants/writ petitioners had already been executing the works for which the impugned NIB was issued, why the respondent No.2 had not adopted the "swiss challenge method"? This principle i.e. "swiss challenge method" in the matter of contract work had been accepted by the Apex Court in a number of cases. In other words, the right of first refusal should be available to the original proposers i.e. the person who is doing the original work.

The Apex Court (Constitution Bench) in the case of ***Natural Resources Allocation in RE Special Reference No.1 of 2012: (2012) 10 SCC1***, clearly held that in executing public contracts in its trading activity the

State must be guided by relevant principles, and not by extraneous or irrelevant considerations. The same should be based on reasonableness and rationality as well as non-arbitrariness. The Government must act as a prudent businessman and the profit earned should be for public benefit. The Apex Court (Constitution Bench) in **Natural Resources Allocation** case (*Supra*) held that “all the natural resources fall within the domain of “public trust doctrine” and therefore, there is an obligation on the Government to ensure that their transfer or alienation for commercial exploitation is in a fair and transparent manner and only in pursuit of public good.” The doctrine of public trust had been enunciated in the celebrated case of **M.C. Mehta vs. Kamal Nath & Ors: (1997) 1 SCC 388**. In para 34 of the **M.C.** case (*Supra*) held that “legal system – based on English common law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment.” Now, it is fairly well settled that all the natural resources are belonged to the public and the Govt. and the Corporation is only a trustee of the natural resources for the people. Here in this instant case, we are of the considered opinion that boulders and sand are the natural resources which belongs to the public and the respondent No.2 at the most is only a trustee of the said natural resources for the people. The Apex Court in a catena of cases held that in the matter relating with natural resources, the Govt. has to act as a prudent businessman and also to see that profit earned should be for public benefit.

Here in this instant case, by the impugned NIB, the respondent No.2 has to spend crores of rupees for transportation of boulders and sand from the quarry. Therefore, this Court cannot be a silent spectator. Therefore, this Court is to see what is the rational behind it for spending several crores of rupees only for transportation. The Apex Court in **New Horizon Limited & Anr. vs. Union of India & Ors: (1995) 1 SCC 478** held that court can lift the cooperate veil to see inside what is the reason or rational for taking decision by the Corporation. Paras 36 and 37 of the SCC in **New Horizon Limited** case (*Supra*) read as follows:-

*“36. After making a special study of this branch of the law, a learned scholar has discerned four different attitudes towards the company in judicial pronouncements. According to him these categories, in progressive order, are (i) peeping behind the veil; (ii) penetrating the veil; (iii) extending the veil; and (iv) ignoring the veil. The decisions relating to determination of residence or enemy status of a company have been placed by him in the category of “peeping behind the veil” where the court peeps behind the veil and*

*concludes from the shareholders or from the people in control of the company, something about the nature of the company. (See S. Ottolenghi: From Peeping Behind the Corporate Veil to Ignoring it Completely.) (1990) 53 Mod L Rev 338, 340).*

**37. This Court has adopted a similar approach and in some cases it has seen through the corporate veil. In “**Central Inland Water Transport Corpn. Ltd. V. Brojo Nath Ganguly**” (1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103 : (1986) 2 SCR 278 the Court was considering the question whether the appellant company was an agency or instrumentality of the State for the purpose of Article 12 of the Constitution. It was said: (SCR p. 349 : SCC p. 202, para 67)**

**“For the purpose of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State.”**  
So also in **State of U.P. v. Renusagar Power Co. (1988) 4 SCC 59 : 1988 Supp (1) SCR 627** it has been observed : (SCT p. 668 : SCC p. 95, para 68)

***“The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence.”***

In the present world, every instrumentality of the State should be transparent in all matters whether in contract work or whether in administrative function. In this world, China had lifted the bamboo curtain. Therefore in such circumstances, we are of the considered view that we have to lift the cooperative veil to see what is the rationale for taking decision for spending several crores of rupees by issuing NIB for transportation of boulders and sand from the quarry to the dam site.

For the foregoing reasons, we are of the considered view that there is material for admitting the appeals. The appeals are admitted.

In the interest of public, we are of the considered view that an interim order is called for. Accordingly, the NIB dated 11.10.2013 for collection, loading, unloading and stacking of boulders and sand to the project site located at Bichom Dam site, NIB dated 11.10.2013 for collection, loading, unloading and stacking of boulders and sand to the project site located at Tenga Dam site under Kameng H.E. Project and NIB dated 11.10.2013 for collection, loading, unloading and stacking of boulders and sand to the project site located at Kimi Power House site under Kameng H.E. Project and the impugned judgment and order dated 29.10.2013 shall remain suspended.

However, the present appellants/writ petitioners as usual exclusively for the construction of the dam for which the said contracts works

were awarded, can collect the sand and boulders from the quarry from where respondent No.2 under his letter dated 25.09.2013 allowed the present appellants/writ petitioners to collect the sand and boulders. Considering the matter involves in this case, the respondent No.2 is at liberty to file any application for modification, alteration or cancellation of the interim order at any time.

List this case again after 5(five) weeks.

In the interregnum, the respondents may file affidavit-in-opposition.

**JUDGE**

**JUDGE**

*Lam*

WP(C)No.125/2011

BEFORE  
HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN

01.11.2013

(T.N.K. Singh,J)

Passed over for the day on the prayer of Mr. VK Jindal,  
learned senior counsel for the petitioner.

JUDGE

JUDGE

Lam

WP(C)No.125/2011

BEFORE  
HON'BLE MR. JUSTICE T NANDAKUMAR SINGH,  
THE HON'BLE MR. JUSTICE S R SEN

01.11.2013

(T.N.K. Singh,J)

On the prayer of Mr. H Kharmih, learned counsel for the petitioner, list this case again on *29.11.2013*.

JUDGE

JUDGE

*Lam*