

**HIGH COURT OF TRIPURA
AGARTALA**

Cont.Cas(C) No.36/2022

Shri Mithan Roy

.....Petitioner(s).

V E R S U S

Mr. J.K. Sinha, IAS & another

.....Respondent(s).

For Petitioner(s) : Mr. G.K. Nama, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, Sr. Advocate,
Mr. Soumyadeep Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

Order

17/04/2023

(Aparesh Kumar Singh, C.J.)

We have heard learned counsel for the parties and gone through the order under offence and also the latest affidavit of the respondents dated 09.09.2022.

The operative part of the order under offence reads as under:

"After hearing the learned counsel for the respective parties and taking note of the provisions of the Income Tax Act, as noted hereinabove, it is clear that Tax Deducted at Source (TDS) under the Income Tax Act from the petitioner. Since the petitioner is a sole proprietorship company hence an individual should have been computed on the basis of 1% even though 2% has been stated in the tender conditions. This has to be so, since the tender condition vis-à-vis TDS under the Income Tax Act has to be in due compliance of the

Income Tax Act and not at the discretion of the party issuing the tender notice. Apart from that, the tender committee itself has noted that the petitioner was the L1 bidder and the only reason cited by the AGMC is noted in paragraph no.5 of their counter affidavit extracted hereinabove. No explanation at all has been provided as to why the petitioner who is an individual and a proprietorship firm should be considered to be obliged to get 2% of his bill to be deducted on account of TDS though Section 194 C(1)(i) prescribes only 1% for the same.

Accordingly, we allow the writ petition with the following directions:

The tender committee of the AGMC shall reconsider the bid received by it on the basis as noted hereinabove.

To a query from the Court, learned counsel representing the AGMC submitted that although a work order was issued on 1 st October 2021 in favour of respondent No.3, no work has yet been assigned to them. Consequently, we direct the committee constituted by the AGMC for evaluation of tender to immediately revisit the tender received and treat the petitioner as an individual from whom only 1% TDS towards income tax is liable to be deducted.

With such observations and directions, the writ petition is disposed of. The entire action by the respondents and in particular of the tender committee shall be concluded within a period of 1 (one) month from today."

A review petition was filed thereafter and that has been dismissed. Affidavits have been filed to show compliance in the present petition. The latest affidavit of 09.09.2022 at paragraph-4 onwards contains

a table which clearly indicates the computation of the TDS amount and evaluation of the respective bidders on the criteria as per the NIT and the direction of the Writ Court.

Mr. G.K. Nama, learned counsel for the petitioner, has tried to point to us that the final computation has not been done in accordance with law.

Mr. Debalay Bhattacharya, learned senior counsel appearing for the respondents, has, however, tried to point out to the computation at page-48 of the memo of the petition which, according to us, clearly shows that the computation has been made with deduction @ 1% of TDS.

In contempt jurisdiction, we cannot go beyond the order under offence to examine the decision on merits. As such, we are satisfied that no case of contempt is made out.

We are informed that work order has already been issued.

Accordingly, the instant contempt petition is disposed of.

(T. AMARNATH GOUD), J

(APARESH KUMAR SINGH), CJ