

GAHC040010382023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/202/2023

M/s Palo Malo Enterprise
Age: 0
Occupation :
Address: Represented by its Proprietor
Shri Tatung Takar Ame
having its Registered Office at Niti Vihar
Itanagar
PS Niti Vihar
PO Itanagar
Dist. Papum Pare
Arunachal Pradesh.
Mobile No. 6009104554

VERSUS

THE STATE OF AP and 10 Ors.
Age: 0
Occupation :
Address: Represented by the Chief Secretary
Civil Secretariat
Block No. II
5th Floor
Govt. of Arunachal Pradesh
Itanagar.

2: The Secretary
Age: 0
Occupation :
Address: Public Works Department
Govt. of Arunachal Pradesh
Civil Secretariat
Block II

3rd Floor
Room No. 315-317
Itanagar.

3:The Executive Engineer
Age: 0
Occupation :
Address:Capital Division A
Public Works Department
Govt. of Arunachal Pradesh
Itanagar.

4:The Assistant Engineer
Age: 0
Occupation :
Address:Capital Sub Division 6/A
Public Works Department
Govt. of Arunachal Pradesh
Itanagar.

5:Tagru Tate
Age: 0
Occupation :
Address:S/o Late Tagru Tapo

R/o Back Side of State Guest House
Niti Vihar
PO Itanagar
PS Niti Vihar
Dist. Papum Pare
Arunachal Pradesh.

6:Tagru Taring
Age: 0
Occupation :
Address:S/o Late Tagru Take

R/o Back Side of State Guest House
Niti Vihar
PO Itanagar
PS Niti Vihar
Dist. Papum Pare
Arunachal Pradesh.

7:John Tagru
Age: 0
Occupation :
Address:S/o Shri Tagru Tarak

R/o Barapani Naharlagun
PO/PS Naharlagun
Dist. Papum Pare
Arunachal Pradesh.

8:Tagru Takia
Age: 0
Occupation :
Address:S/o Late Tagru Tapo

R/o Back Side of State Guest House
PO Itanagar
PS Niti Vihar
Dist. Papum Pare
Arunachal Pradesh.

9:Tagru Bai
Age: 0
Occupation :
Address:S/o Shri Tagru Taluk

R/o Narba Colony
Itanagar
PO/PS Itanagar
Dist. Papum Pare
Arunachal Pradesh.

10:Gichick Tachu
Age: 0
Occupation :
Address:S/o Lt. Gichick Tagang

Resident of E Sector
Itanagar
PO/PS Itanagar
Papum Pare District
Arunachal Pradesh.
Proprietor of M/s GJ Enterprise.

11:Lindum Taying
Age: 0
Occupation :
Address:S/o Lt. Lindum Tachu

Resident of Dokum Colony
Itanagar
PO/PS Itanagar

Papum Pare District
Arunachal Pradesh.
Proprietor of M/s Lindum Taying Enterprise.

Advocate for : 1 U Bori
Advocate for : GA (AP) appearing for THE STATE OF AP and 10 Ors.: Advocate ,

,

,

,

,

,

,

,

,

, appearing for 2,

3,

4,

5,

6,

7,

8,

9,

10,

11, respectively.

Linked Case : IA(C)/128/2023

Gichik Tachu and Anr.

Age: 1
Occupation :
Address:S/o Lt. Gichik Tagang

Resident of E Sector
Itanagar
PO/PS Itanagar
Papum Pare District
Arunachal Pradesh.
Proprietor of M/s G.A Enterprise.

VERSUS

M/s Palo Malo Enterprise
Age: 0
Occupation :
Address:Represented by its Proprietor Shri Tatung Takar having its Registered Office
at Niti Vihar
Itanagar
PO Niti Vihar
PO Itanagar
Papum Pare District
Arunachal Pradesh.

Advocate for : M Nibo
Advocate for : Rinchin Ledo Thungon appearing for M/s Palo Malo Enterprise:
Advocate appearing for respectively.

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 09-08-2023

Heard Mr. K. Tayeng, learned counsel for the petitioner.

Also heard Ms. K. Wangmo, learned Government Advocate, appearing on behalf of Respondents No. 1, 2 & 4; and Mr. Michi Nibo, learned counsel, appearing on behalf of Respondents No. 10 & 11.

This writ petition has been filed by the petitioner with the following prayers:

- a) Direct the respondent Nos. 2 to 4 to allow the petitioner to submit his tender paper/bid against NIT No. Package No. CDA/W-3/6A/2023-24/ m-T-01 dated 20.04.2023 for the work "Extension of road at backside of State Guest house, Niti Vihar, Itanagar".
- b) Further direct the respondent Nos. 2 to 4 to accept the petitioner's tender paper/bid against NIT No. Package No. CDA/W-3/6A/2023-24/ m-T-01 dated 20.04.2023 for the work "Extension of road at backside of State Guest house, Niti Vihar, Itanagar".

The grievance of the petitioner, who states to be a registered Class-III(B&R) under Civil Category as per the Enlistment of Contractors in Works Department Rules, 2008, is that the petitioner has been prevented from submitting his tender papers pursuant to the Notice Inviting Tender(undated), issued by the Executive Engineer, Capital Division-A, Public Works Department, Itanagar, vide No. CDA/W-3/6A/2023-24, inviting item rate tender in CPWD Form-8 from registered/enlisted contractors of Class-IV & Class-III categories in APPWD and domiciled within the territorial jurisdiction of Assembly Constituencies as per the provision defined under the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Development & Promotional) Act, 2015, for the work "Extension of road at backside of State Guest House, Niti Vihar, Itanagar" under the following circumstances:

The Executive Engineer, Capital Division-A, Public Works Department, Itanagar, had issued the Notice Inviting Tender (Annexure-2 to the writ petition) inviting item rate tender as mentioned above, whereby, it was *inter alia* provided that the tender form and other details can be obtained from the Office of the Assistant Engineer, Capital Sub-Division-6/A PWD, Itanagar, from 1030 hrs. of 24/04/2023 to 1600 of 26.04.2023. It is further provided that the tender shall be received from the Assistant Engineer, Capital-Sub-Division-6/A PWD, Itanagar, upto 1130 hrs. of 27/04/2023 and

the date of opening of the tender shall be on 28/04/2023 at 1230 hrs., in presence of the intending bidders or their representatives.

According to the petitioner, pursuant to the aforesaid Notice Inviting Tender(undated), he had gone to the Office of the Assistant Engineer, Capital Sub-Division-6/A Public Works Department, Itanagar, on 24.04.2023, to collect the tender papers, on which date, he was assaulted by a group of persons in order to prevent him from collecting the tender papers. The petitioner, thereafter, lodged an First Information Report(FIR), dated 24.04.2023, to the Officer In-Charge, Police Station Itanagar, for committing an offence of wrongful restrain, causing grievous injury, theft, mischief and criminal intimidation to the petitioner, in which, he has named the respondents No. 5 to 9, herein. Pursuant to the aforesaid First Information Report(FIR), the Officer In-Charge, Police Station Itanagar, has registered a formal First Information Report(FIR), under Section 154 of the Code of Criminal Procedure, 1973, as ITA P.S. Case No. 88/2023, under Sections 341/325/34 of the Indian Penal Code.

It is the further case of the petitioner that he had also written to the Deputy Commissioner, Itanagar Capital Complex, Itanagar, on 27.04.2023, for providing security at the Office of the Executive Engineer, Capital Division-A, Public Works Department, Itanagar, to enable him to participate in the tender process peacefully and also to the Superintendent of Police, Itanagar Capital Complex, Itanagar, on 27.04.2023, lodging an First Information Report(FIR), against the respondents, noted-above, stating that on 27.04.2023 also, the respondents No. 5 to 9 along with approximate 200 others, had prevented him from submitting the tender papers. Because of the above circumstances, the petitioner contends that he could not submit the tender papers due to the inability of the State respondents to provide security to

him for such submission.

Upon consideration of the contentions raised as above; this Court, vide order, dated 28.04.2023, had passed an interim order whereby, it was provided that further proceeding of the Notice Inviting Tender(undated) issued by the Executive Engineer, Capital Division-A, Public Works Department, Itanagar, vide No. CDA/W-3/6A/2023-24, for the work "Extension of road at backside of State Guest House, Niti Vihar, Itanagar", shall remain stayed.

The State Respondents as well as the private respondents No. 10 & 11 have filed their respective counter affidavits.

The Respondents No. 10 & 11 who had submitted their bids pursuant to the aforesaid Notice Inviting Tender(undated), have also filed an interlocutory application before this Court being IA(c)128(AP)2023, seeking for modification/alteration/vacation of the interim order, dated 28.04.2023, passed by the Court, in this writ petition.

Since the further proceeding in the Notice Inviting Tender (undated), in question, has been stayed by the Court, vide order, dated 28.04.2023, passed in the writ petition; Ms. Wangmo, learned Government Advocate, as well as Mr. Nibo, learned counsel representing Respondents No. 10 & 11 who had submitted their respective bids pursuant to the aforesaid Notice Inviting Tender; have submitted that this writ petition may be disposed of by allowing the writ petitioner to submit his bid in the Notice Inviting Tender(undated), in question, and thereafter; the concerned respondent authorities may be directed to finalize the tender, in accordance with law.

The above proposal made by the learned counsels appearing for the respondents being not opposed by Mr. Tayeng, learned counsel for the petitioner; the instant writ petition stands disposed of on a concession made by Ms. Wangmo, learned Government Advocate, and Mr. Nibo, learned counsel representing Respondents No. 10 & 11, by directing the respondent authorities, more particularly, Respondent No. 3 viz. the Executive Engineer, and Respondent No. 4, namely, the Assistant Engineer, to allow the petitioner, herein, to submit his bid in the Notice Inviting Tender(undated) issued by the Executive Engineer, Capital Division-A, Public Works Department, Itanagar, vide No. CDA/W-3/6A/2023-24, for the work "Extension of road at backside of State Guest House, Niti Vihar, Itanagar", which shall be submitted by the petitioner within a period of 1(one) week from today.

After the bid is submitted by the petitioner, as above; the respondent authorities shall, thereafter, proceed to evaluate all the bids submitted pursuant to the Notice Inviting Tender(undated) for the work "Extension of road at backside of State Guest House, Niti Vihar, Itanagar" and finalize the same, in accordance with law.

The writ petition stands disposed of, in terms above. Resultantly, the connected interlocutory application being IA(c)128(AP)2023, also stands disposed of.

JUDGE

Comparing Assistant