

GAHC040009762021



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

Case No. : WP(C) 322/2021

1:Kya Fangcha
S/o Late Khya Tadung,
Resident of Upper Niti Vihar P/O and PS Itanagar, Dist Papum Pare, Arunachal Pradesh authorized person for M/S Aquarian Enterprises

VERSUS

1:THE STATE OF AP and 4 Ors.
Represented by Chief Secretary, Govt. of A.P, Itanagar

2:The Secretary/Commissioner
Power
Govt. of Arunachal Pradesh
Itanagar

3:The Chief Engineer Power (Transmission)
Govt. of A.P
Itanagar.

4:The Superintendent Engineer (E)
Transmission Division No. II 132/33 kV Sub - Station Chimpu
Department of Power
Govt. of Arunachal Pradesh

5:Executive Engineer (E)
Transmission Division No. II
Department of Power Itanagar
A.

Advocate for the Petitioner : Reken Ingo
Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 13.03.2023

Heard Mr. T. Umbey, learned counsel for the petitioner. Also heard Mr. Lissing Perme, learned standing counsel, Power Department, Government of Arunachal Pradesh, appearing on behalf of all the respondents.

This writ petition is directed against the Notice Inviting Tender(NIT), dated 20.09.2021, issued by the Executive Engineer(E), Transmission Division No. II, 132/33/ KV Sub-Station, Chimpu, Itanagar, under Memo. No. TD-II/W-46/NIT/2021-22/550-610, whereby, fresh sealed item tenders from the eligible contractors for the work i.e. "Shifting of Electrical Utilities from the Right of Way(RoW) of Trans-Arunachal Highway (Potin to Pangin Segment of NH-13) {Shifting & Relocation of 132 KV Towers between Ziro & Tai}", contending that the respondent authorities had earlier floated a tender on 25.03.2021, which, however, was cancelled and in the present impugned Notice Inviting Tender(NIT), dated 20.09.2021; lots of changes have been deliberately made by the respondent authorities in the eligibility criteria just to restrain the petitioner from participating in the tender process and to favour some influential Firms.

The counter affidavit by the respondents No. 2 to 5 have been filed wherein, *inter alia*, it has been stated that during the pendency of this writ petition, the said tender was settled with one M/s. M.D. Enterprise, Naharlagun, by a Deed of Agreement entered into between the respondent authorities and M/s. M.D. Enterprises, Naharlagun, on 05.11.2021, and pursuant thereto; 60% of the work has been completed.

The counter affidavit by the respondent authorities was filed on 30.03.2022. It appears that since 30.03.2022, the petitioner had taken time, at least, on 4(four) occasions for filing of a rejoinder affidavit as indicated in the Office Notes, dated 18.07.2022, 25.10.2022, 30.01.2023, and 10.03.2023.

Today also, Mr. Umbey, learned counsel for the petitioner, is praying for time to file the rejoinder affidavit to the counter affidavit filed by the State Respondents.

Though further time has been sought for by the petitioner to file the rejoinder affidavit; this Court also finds that M/s. M. D. Enterprises, Naharlagun, who had awarded the work vide Deed of Agreement, dated 05.11.2021, has also not been impleaded as a respondent in the instant writ petition.

In view of the above and having taken note of the fact that the respondent authorities in the affidavit-in-opposition filed on 30.03.2022 have stated that presently, 60% of the work has been completed and since we are now in the month of March, 2023, in all probability, the entire work might have been completed by M/s. M. D. Enterprises, Naharlagun, who was awarded with the work; this Court, is, therefore, of the view that even if this writ petition is allowed, on contest, no direction can be given to the respondent authorities to award the work to the petitioner for which the Notice Inviting Tender(NIT), impugned herein, was issued.

This writ petition is accordingly disposed of with a liberty granted to the petitioner to file a suit against the respondent authorities if he is of the view that for not allotting the work to him as mentioned in the Notice Inviting Tender(NIT), dated, 20.09.2021, he has suffered loss and damage; if so advised.

The writ petition accordingly stands disposed of with the above observation.

JUDGE

Comparing Assistant