

GAHC040010762022



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

Case No. : WP(C) 317/2022

1:M/s Haniya Enterprise
Proprietor Shri Tarh Kina,
Permanent Resident of Village Arung, PO Mengio and PS Sagalee, District Papum
Pare, Arunachal Pradesh.
Contact No. 918974337038

VERSUS

1:THE STATE OF AP and 4 Ors.
Represented by Secretary, Public Works Department, Govt. of Arunachal Pradesh,
Itanagar.

2:The Chief Engineer
Public Works Department
Itanagar
Govt. of Arunachal Pradesh.

3:The Superintending Engineer
Public Works Department
Naharlagun
Govt. of Arunachal Pradesh.

4:The Executive Engineer
Public Works Department
Sagalee Division
Papum Pare District
Arunachal Pradesh.

5:M/s Jumsi Enterprise
Proprietor Smti Nabam Aka

having its registered office at Doye building
Vivek Vihar
PO/PS Itanagar
Papum Pare District
Arunachal Pradesh

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 06-03-2023

Heard Mr. P. D. Nair, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Government Advocate for the State respondents and Mr. D. Kamduk, learned Standing counsel for the Land Management Department, representing the respondent no. 5.

2. By means of this writ petition, the petitioner has put to challenge the NIT, dated 04.03.2022, issued by the Executive Engineer, Sagalee Division, PWD, vide No. SLD/W-22/2021-22/810, inviting online item rate tender in CPWD Form 8 from all the eligible contractors of APPWD and those of appropriate class with CPWD/NEEPCO/NBCC/BRO/MES/RAILWAYS/APWD in Single bid systems as per Arunachal Pradesh District Based Entrepreneurs & Professional (Incentive, Development & Promotional) Act, 2015, for the work of upgradation of road from Khola Camp to Kheel via Satang (36.00 Km), Papumpare District (Phase-I Kheel to Satang).

3. The facts leading to filing of the present writ petition, briefly stated, are as follows:

The Executive Engineer, Sagalee Division, PWD, vide NIT dated 25.01.2022, bearing No. SLD/W-22/2021-22/672, had invited online item rate tender in CPWD Form 8 from all the eligible contractors of APPWD and those of appropriate class with CPWD/ NEEPCO/ NBCC/ BRO/ MES/ RAILWAYS/ APWD in Single bid systems as per Arunachal Pradesh District Based Entrepreneurs & Professional (Incentive, Development & Promotional) Act, 2015, for the work of upgradation of road from Khola Camp to Kheel via Satang (36.00 Km), Papumpare District (Phase-I Kheel to Satang), providing the start date and time of submission of bid as 28.01.2022, last date & time of submission of bid as 04.02.2022 and date and time of opening of bid as 04.02.2022. Pursuant to submission of the bid in terms of the NIT, dated 25.01.2022, including the petitioner's bid, the bid of the petitioner was found to be L-1.

Though the bid of the petitioner was found to be L-1, pursuant to NIT, dated 25.01.2022, the respondent authorities instead of issuing the work order to the petitioner had again put up another NIT, dated 04.03.2022, inviting online item rate tender for the same work, providing the start date and time of submission of bid as 05.03.2022, last date & time of submission of bid as 10.03.2022 and date and time of opening of bid as 10.03.2022.

4. The second NIT, dated 04.03.2022, was put to challenge by the petitioner in WP(C)No. 89/2022, which writ petition, however, was withdrawn on 24.03.2022, with a liberty granted to the petitioner to file a fresh writ petition, challenging the said NIT. Thereafter, this writ petition was filed in

the month of 8th September, 2022.

5. The notice to the respondent in the writ petition was issued by this court by an order dated 15.09.2022. The State respondents have filed a counter-affidavit as well as an additional-affidavit.

6. In the additional-affidavit filed, it has been stated that pursuant to the impugned NIT, dated 04.03.2022, an agreement has been entered into between the respondent no. 5 and the State authorities for execution of the work named, therein and pursuant thereto, the execution of work has been commenced by the respondent no. 5 and as on 20.11.2022, about 48% of the work had been completed by the respondent no. 5.

7. Having taken note of the rival pleadings of the parties and in view of the fact that the writ petition was filed only in the month of September, 2022, whereas, last date for opening of the bid submitted pursuant to the impugned NIT, dated 04.03.2022, was 10.03.2022, whereafter, the agreement for execution of the work was entered into between the State authorities and the respondent no. 5 on 07.05.2022 and by 20.11.2022 about 48% of the work has already been completed by the respondent no. 5 and also in view of the fact that the petitioner had neither participated in the second NIT, dated 04.03.2022, issued by the respondent authorities and that the writ petition was also filed much later in point of time, i.e. September, 2022, despite the impugned NIT having been issued in 04.03.2022, I am not inclined to interfere with the impugned NIT, dated 04.03.2022, issued by the Executive Engineer, Sagalee Division, PWD, vide No. SLD/W-22/2021-22/810, in exercise of the extra ordinary power of this Court under Article 226 of the Constitution of India.

8. Accordingly, the writ petition stands dismissed, being devoid of merit.

JUDGE

Comparing Assistant