



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

Case No. : Review Pet./11/2023

THE STATE OF AP and 2 Ors.

Represented by the Secretary, Public Work Department (PWD), Govt. of Arunachal Pradesh, Itanagar, Civil Secretariat, Block-II, 3rd Floor Room No. 315-317, Itanagar.

2: the Executive Engineer

Age:

Occupation :

Capital Division A

Public Works Department

Govt. of Arunachal Pradesh

Itanagar.

3: the Assistant Engineer

Age:

Occupation :

Capital Sub Division 6/1

Public Works Department

Govt. of Arunachal Pradesh

Itanagar

VERSUS

M/s Palo Malo Enterprise and 7 Ors.

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

2: Tagru Tate

Age: 0

Occupation :

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.

3:Tagru Taring

Age: 0

Occupation :

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.

4:John Tagru

Age: 0

Occupation :

S/o Shri Tagru Tarak

R/o Barapani Naharlagun

PO/PS Naharlagun

Dist. Papum Pare

Arunachal Pradesh.

5:Tagru Takia

Age: 0

Occupation :

S/o Late Tagru Tapo

R/o Back Side of State Guest House

PO Itanagar

PS Niti Vihar

Dist. Papum Pare

Arunachal Pradesh.

6:Tagru Bai

Age: 0

Occupation :

S/o Shri Tagru Taluk

R/o Narba Colony

Itanagar

PO/PS Itanagar

Dist. Papum Pare

Arunachal Pradesh.

7:Gichick Tachu

Age: 0

Occupation :

S/o Lt. Gichick Tanang

Resident of E Sector

Itanagar

PO/PS Itanagar

Papum Pare District

Arunachal Pradesh. Proprietor of M/s G.A Enterprise.

8:Lingdum Taying
Age: 0
Occupation :
Proprietor M/s Lingdum Taying Enterprise
S/o Lt. Lindum Tachu
Resident of Dokum Colony
Itanagar
PO/PS Itanagar
Papum Pare District
Arunachal Pradesh
Proprietor of M/s Lindum Enterprise

Advocate for the Petitioner : Mr. S. Tapin

Advocate for the Respondent : Mr. U. Bori

BEFORE
HONBLE MR. JUSTICE NELSON SAILO

JUDGMENT

Date : 05.12.2023

Heard Mr. S Tapin, learned Senior Government Advocate for the petitioners and Mr. U Bori, learned counsel for the respondent No. 1. On 21.11.2023, Court passed the following order:

“Heard Mr. S. Tapin, learned Senior Govt. Advocate, Arunachal Pradesh appearing for the Review petitioners who submits that by filing this Review Petition, the petitioners seek review of the Order dated 25.08.2023 passed by this Court in WP(C) No. 409/2023 in view of the fact that the writ petitioner on 25.08.2023 had misrepresented the fact that he had submitted his bid on 16.08.2023 whereas, he had actually submitted his bid on 17.08.2023. In order to substantiate his submission, the learned Senior Govt. Advocate relies upon the Receipt Register, which is annexed to the Review Petition along with the application submitted by the writ petitioner as 'Annexure-5'. Referring to the Receipt Register, the

learned Senior Govt. Advocate submits that the application of the writ petitioner enclosing his bid was received on 17.08.2023 under Serial No. 1061 and therefore, the Order dated 25.08.2023 which was passed on the premise that the writ petitioner had submitted his bid on 16.08.2023 may be reviewed.

In view of above, issue notice to the respondent returnable on 05.12.2023. Mr. U. Bori, learned counsel accepts notice on behalf of the sole respondent/writ petitioner. As such, no formal notice is required. Petitioners to furnish a copy of the Review Petition to Mr. U. Bori, if not already done.

The respondent will be at liberty file objection to the Review Petition and the Senior Govt. Advocate shall also produce and submit the Receipt Register annexed to the Review Petition at page No. 119 in original before the Registry in Itanagar Bench of this Court. The Registry shall then transmit the same before the Aizawl Bench of this Court or wherever this Court is sitting.

List the matter accordingly on 05.12.2023."

[2.] Today, the Receipt Register in original is placed before this Court as was directed. The original application submitted by the respondent No. 1 on 16.08.2023 to the Executive Engineer, Capital Division-A, PWD:AP: Itanagar for allowing him to participate NIT against "*Extension of road at back side of the State Guest House, Niti Vihar, Itanagar*" is also placed before this Court in original.

[3.] Brief facts of the case for the purpose of disposal of the instant review petition is that according to the respondent No. 1, he was prevented from submitting his tender documents against the NIT stated herein above and therefore, he

approached this Court by filing WP(C) No. 202/2023. The writ petition was disposed of vide Order dated 09.08.2023 by allowing the petitioner to submit his tender papers within a period of one week from the date of the order. According to the respondent No. 1, he submitted his tender papers within a period of one week i.e., 16.08.2023 but the authority concerned despite receipt of the same did not evaluate his tender papers. Being aggrieved, he filed his second writ petition i.e., WP(C) No. 409/2023.

[4.] The second writ petition of the respondent No. 1 was disposed of vide Order dated 25.08.2023 and the operative portion of the said order is abstracted herein for ready perusal:

“...Upon hearing submissions made by the learned counsel for the parties and upon perusal of the statement made by the petitioner in paragraph no. 14 that he submitted his bid on 16.08.2023 and the same was received by the office of the respondent No. 3 and also considering the fact that 15th August, 2023 was a national holiday, the approach of the respondents is found to be a hyper technical approach. As such, for the ends of justice, it is hereby directed that the bid submitted by the petitioner on 16.08.2023 be also considered and evaluate by the respondent authority concerned.

The writ petition stands disposed of accordingly. The Caveat also stands discharged.”

[5.] The official respondents in the writ petitions have now filed the present review petition stating that the respondent No. 1/writ petitioner had misled this Court which resulted in passing the Order dated 25.08.2023. According to the review petitioners, the respondent No. 1 failed to comply with the Order dated 09.08.2023 as

he had submitted his bid only on 17.08.2023 and not on 16.08.2023 and therefore, the review petition should be allowed as prayed for and the writ petition should be dismissed on the ground of suppression of facts by the respondent No. 1/writ petitioner. Mr. S Tapin in support of his submission in this regard has relied upon the following authorities:-

(1) S P Chengalvaraya Naidu (DEAD) by LRS. Vs. Jaganath (DEAD) By LRS. & Ors., reported in (1994) SCC 1.

(2) K D Sharma vs. Steel Authority of India Limited & Ors., (2008) 12 SCC 481.

[6.] Mr. U Bori, learned counsel for the respondent No. 1, on the other hand, submits that the respondent No. 1 indeed submitted his tender papers on 16.08.2023 and the same was received on that date by one multi-tasking staff Mr. R C Sarkar and therefore, there cannot be any doubt of the fact that the respondent No. 1 submitted his tender papers on 16.08.2023. He, therefore, submits that the review petition should be dismissed.

[7.] I have heard the submissions made by the learned counsels for the parties and I have perused the materials available on record including the original Receipt Register and the Application dated 16.08.2023 produced by the review petitioners.

[8.] This Court in WP(C) No. 409/2023 upon finding the approach of the official respondents to be hyper technical directed the respondent authorities to consider the bid submitted by the respondent No. 1 on 16.08.2023 and evaluate the same. However, by this review petition, the official respondents maintain that the respondent

No. 1 submitted his bid documents on 17.08.2023 and not on 16.08.2023. The application of the writ petitioner/respondent No. 1 dated 16.08.2023 produced by the review petitioners in original has been perused. In the application, there is a stamp with a hand written entry which shows that the application was received on 17.08.2023 under Serial No. 1061. Likewise, the original Receipt Register also shows that entry of the application submitted by the respondent No. 1 was made on 17.08.2023 under Serial No. 1061.

[9.] However, it is also seen that according to the writ petitioner/respondent No. 1 in his writ petition i.e., WP(C) No. 409/2023, he had stated that due to certain personal difficulties, he could only submit his tender documents along with his application to allow him to participate in terms of the earlier Court's Order dated 09.08.2023 passed in WP(C) No. 202/2023 only on 16.08.2023. In support of his statements in this regard made in paragraph No. 14 of WP(C) No. 409/2023, the respondent No. 1 had annexed copy of his Letter dated 16.08.2023 as Annexure-8 to the writ petition. The same is also annexed in the present review petition at page No. 116. A perusal of the same goes to show that the Application dated 16.08.2023 of the respondent No. 1 addressed to the Executive Engineer, Capital Division-A PWD:AP: Itanagar was received on 16.08.2023 itself. However, there is no Sl. No. mentioned in the stamped seal except for hand written date i.e., 16.08.2023. Besides this, there is also a signature and date i.e., 16.08.2023 on top of the stamped seal. Merely because there is no serial number written in the stamp given in the said letter, can it be said that it was not submitted on 16.08.2023. It may also be possible that the letter was

submitted on 16.08.2023 but entry of the same was made in the Receipt Register only on 17.08.2023. Fact remains that this Court cannot embark upon a fact finding mission in exercise of its power under 226 of the Constitution of India. What is important to notice here is that this Court in its Order dated 28.08.2023 passed in WP(C) No. 409/2023 was of the view that the approach of the official respondents was only hyper technical in view of the fact that a week's time was granted to the respondent No. 1/writ petitioner to submit his tender documents vide Order dated 09.08.2023 and according to the official respondents, one week ended on 15.08.2023, a National holiday viz; Independence Day. It was under such circumstance that the respondent authorities were directed to also consider the bid submitted by the respondent No. 1 and to evaluate the same.

[10.] Court is informed that the respondent authorities concerned have opened the bid documents but have not proceeded further on account of the filing of the instant review petition on 26.09.2023. No particular reason has been mentioned as to why the review petition for reviewing Order dated 25.08.2023 has been filed after a month. It is also seen that no particular provision has been quoted in the cause-title for filing the instant review petition. Therefore, having regard to the jurisdiction of this Court under Article 226 of the Constitution of India while keep in mind the circumstances under which the respondent No. 1 was allowed to participate in the tender process, I do not find any ground to allow the review petition as is being prayed for. Authorities relied upon by the learned Senior Government Advocate about the non-maintainability of the writ petition in view of abuse of process of Court due to

fraud is also found to be not applicable to the present case.

[11.] In the result, the Review Petition is dismissed. The Departmental authorities concerned shall proceed with the matter in accordance with the directions already given vide Order dated 25.08.2023 in WP(C) No. 409/2023. Registry shall send back the original Receipt Register No. 936 and the Application dated 16.08.2023 of the respondent No. 1 to the Registry of this Court at Itanagar Permanent Bench and the same shall be returned back to the Department concerned through the learned Senior Government Advocate Mr. S Tapin.

JUDGE

Comparing Assistant