

GAHC040013322022



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

Case No. : WP(C) 415/2022

1:M/s Don Enterprises
Office at Zoo Road, Gohpur, PO R.K Mission, PS Itanagar, District Papumpare,
Arunachal Pradesh, PIN 791113.
Through Solo Propretor Shri Tai Talley, S/o Tai Tariam, Resident of Village Zoo
Road, Gohpur, PO R.K. Mission, PS Itanagar, District Papumpare, Arunachal
Pradesh. Pin 791113.
M. No 8730968716

VERSUS

1:THE STATE OF AP and 4 Ors.
Represented by the Seceretary, Department of PWD, Govt. of Arunachal Pradesh.

2:The Chief Engineer (Western Zone)
Public Works Department
Govt. of Arunachal Pradesh
Itanagar.

3:The Superintending Engineer
Sagalee Circle
PWD
AP

4:The Executive Engineer
Sagalee Division
PWD
Sagalee
District Papumpare
Arunachal Pradesh.

5:The Assistant Engineer
Mengio PWD Subdivision
Mengio
District Papumpare
Arunachal Pradesh

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 13.02.2023

Heard Mr. L. Perme, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Additional Advocate General for the State representing all the respondents.

2. This writ petition is directed against the NIT dated 29.10.2022 issued by the Executive Engineer, Sagalee Division PWD, AP, Sagalee vide No. SLD/W-22/2022-23/1019, inviting online (Turnkey mode) in two bid system (TECHNICAL & FINANCIAL) from Class-I (Civil Category) APST contractors enlisted in APPWD and equivalent class/category of contractors registered with other enlistment authority having domiciled status defined within the territorial jurisdiction of Papumpare District as per the (*Arunachal Pradesh District Based Entrepreneurs and professionals incentives, Development & Promotional*) Act, 2015, for the work "Construction of Road from Marung Gika to Panior Bridge Point via Sarchgai, Mate, Kusuk and Pan 21.00 Km under NESIDS (3rd call)".

3. The aforesaid impugned NIT dated 29.10.2022 is stated to be the 3rd NIT issued by the respondent authorities for the work mentioned therein.

4. It is the case of the petitioner that in the 2nd NIT dated 02.09.2022, issued by the Executive Engineer, Sagalee Division PWD, AP, Sagalee vide No. SLD/W-22/2022-23/792 for the same work, the petitioner had submitted its bid as per the stipulations made in the NIT dated 02.09.2022. In the NIT dated 02.09.2022, date and time of opening of the technical bid was prescribed as 13.09.2022 at 1100 Hrs and the date and time of the financial bid has been indicated that will be notified later.

5. In assailing the impugned 3rd NIT dated 29.10.2022, it is the case of the petitioner that without taking a decision on the bid(s) submitted pursuant to the NIT dated 02.09.2022, the respondent authorities could not have issued the 3rd NIT dated 29.10.2022 for the same work, for which, the earlier NIT dated 02.09.2022 was issued, where, the petitioner has submitted his bid by complying with all the requirements prescribed in the NIT dated 02.09.2022.

6. The respondent Nos. 3, 4 & 5 have filed their counter-affidavits, wherein, justifying the issuance of the 3rd NIT dated 29.10.2022 in Paragraph Nos. 18, 19, 20 & 21, it has been stated as under:-

18. That with regards to the statement made in paragraphs-17 and 18 of the writ petition, the answering respondent agreed, the time line for scrutiny/finalisation of Technical bid has expired on 13/10/2022 as per CPWD Works Manual. Hence, the Chief Engineer (WZ) has extended another 15 (fifteen) days for the scrutiny and finalisation of the technical bid. But due to objection from public and abnormal delay in finalisation of technical bid and also inadvertent conditions incorporated in the NIT in overriding the

statutory provision defined under Arunachal Pradesh District Based Entrepreneurs Rules-2015, the Chief Engineer (WZ), has in the best interest cancelled the NIE-T (2nd Call) invited by the Executive Engineer vide order/ NO. CEAP(WZ)/WC-19/NIT/NESIDS/2022-23/122 dated 20/10/2022. And also the recommendation of tender does not have the signature of the Superintending Engineer, Sagalee Circle which inter-alia will take more than 15 days time in re-processing the matter and may invite flood gate of litigation for such lapses. Hence the respondent authority has cancelled the tender to provide equal level playing field to all prospective bidders for a fair & competitive bidding and to avoid unnecessary litigation.

19. That with regards to the statement made in paragraph-19 of the writ petition, the answering respondent begs to state that as per letter no. CEAP[WZ]/WC-19/NIT/NESIDS/2022-23/124 dated 21/10/2022 the Chief Engineer WZ, PWD, AP, Itanagar has asserted that out of 16 (sixteen) participating bidders in 2nd Call of IFB, 13(thirteen) has not submitted affidavits sworn before "Judicial Magistrate First Class". However, Rule -4(ii) (e) of The Arunachal Pradesh District Based Entrepreneurs and Professional Rules 2018 prescribes only "Affidavit" without any reference to the class of magistrate. Insertion of "First Class Magistrate" in the Standard Bidding Document was an inadvertent mistake and it was in contravention and overrode the statutory provisions. In view of this fact and under apprehension of an imminent litigation by aggrieved bidders, the IFB dated 02/09/2022 has to be cancelled to enable floating of fresh tender invitation. The Chief Engineer WZ, PWD AP does not have the authority to override any statute provisions of an Act. Cancellation of the 2nd Call of IFB was not arbitrary or whimsical but it was done to rectify an inadvertent mistake to provide equal level playing field to all prospective bidders.

20. That with regards to the statement made in paragraph-20 of the writ petition, the answering respondent begs to state that the respondent

authorities has not denied any prospective bidders the rights to participate in the fresh NIE-T (3rd Call) including the petitioner. Hence, the allegation of the petitioner that the respondent authorities has taken the decision in malafide intention to favour any firm who are not technically qualify is false and misleading. The respondent authority has acted in principles of providing natural justice to all bidders by providing equal level playing field to all prospective bidders for fair & competitive bidding and also in order to avert flood gates of litigation for the inadvertent mistake, purely in public interest.

21. That with regards to the statement made in paragraph-21 of the writ petition, the answering respondent begs to state that the three new conditions, which were originally not part of the Standard Bidding Document, were added after threadbare discussion with the bidders present in the pre-bid meeting and with their unanimous consent. The request for inclusion of Inspection Vehicle (Condition No.1) was felt necessary by the department for routine inspection of the site in a timely manner in the interest of the project only. It is pertinent to mention that as per sanction order of the project, there are no provisions for the contingent expenditure such as work charged or other sundries.

Condition No.2 was included to ensure that the technically responsive bidders possessed all the necessary machineries for implementation of the work and thus to ascertain the veracity of the affidavit submitted by the bidder regarding Tools and Plants.

Condition No.5 was included after insistence of the contractors of the district. It was felt that contractors with dubious domicile status may participate in the bidding which goes against the spirit of the “Arunachal Pradesh District based Entrepreneurs and Professional (Incentives, Development and Promotional) Act 2015 (Amended in 2020)”. Hence, in addition to ST/PRC, the EPIC was also added to determine the domicile status of the bidders.

The petitioner allegations of withholding the NIE-T (2nd call) for more than one month to favour firm of the respondent authorities choice is completely a baseless and frivolous allegations made with pigment of imagination. The respondent authority has narrated the reason for cancellation of tender which was made in order to provide equal level playing

field to all prospective bidders and to avert flood date of litigation for the inadvertent mistake. Hence, the allegation of petitioner is completely false and untrue.

7. Mr. Perme, learned counsel for the petitioner has submitted that without taking a final decision either rejecting or accepting the bids submitted by the bidders pursuant to the NIT dated 02.09.2022, the respondent authorities could not have issued the impugned NIT dated 29.10.2022 for the same work. Accordingly, the act of the respondent authorities in issuing the 3rd NIT dated 29.10.2022 for the same work is an arbitrary exercise of powers for which reason, it is liable to be set aside and quashed. He further submits that since the petitioner is qualified and eligible to execute the work mentioned in the NIT dated 02.09.2022, the petitioner had submitted its bid by complying with all the requirements that the tender authority had prescribed; and, therefore, the authorities are duty bound to take a decision in the matter either rejecting or accepting the bid of the petitioner.

8. Mr. Nabam, learned Additional Advocate General appearing for the respondents, on the other hand has submitted that after the opening of the technical bids submitted pursuant to NIT Dated 02.09.2022, the petitioner was found to be not qualified in terms of the NIT dated 02.09.2022. He further submitted that there were all together 16 bidders, out of which, only 3 bidders had complied with the terms and conditions prescribed in the NIT dated 02.09.2022.

9. Mr. Nabam, learned counsel further submitted that even those 3 bidders, who were found qualified, their bids were also not in conformity

with the *Arunachal Pradesh District Based Entrepreneurs and professionals incentives, Development & Promotional Act, 2015*, and it is for that reason a fresh NIT i.e., the 3rd NIT dated 29.10.2022 have to be issued by the respondent authorities inviting fresh bid from the eligible and qualified bidders for the same work.

10. I have heard the learned counsels for the parties and perused the materials available on record.

11. Upon hearing the learned counsels for the parties and on perusal of the materials on record, there is no dispute that the impugned NIT dated 29.10.2022 issued by the Executive Engineer, Sagalee Division PWD, AP, Sagalee is for the same work, for which, the Executive Engineer, Sagalee Division PWD had issued the NIT dated 02.09.2022, wherein the petitioner along with 15 others had submitted their bids.

12. Apart from the justification given in the counter-affidavit of the respondent authorities, which has been quoted hereinabove for issuing the 3rd NIT dated 29.10.2022, no material(s) have been placed before this Court, indicating the decision taken and notified by the respondent authorities on the bids submitted by the 16 bidders pursuant to NIT dated 02.09.2022. Once an NIT is issued by the authorities and the bids submitted pursuant thereto, I am of the view that the respondent authorities are duty bound to take a decision in the matter either rejecting or accepting the bids submitted with cogent reason(s). It is so because, the participants/bidders, who have submitted their respective bids pursuant to NIT dated 02.09.2022 have the right to know as to what is the fate of the bids submitted by them.

13. Under the circumstances, I am of the view that in the absence of the respondent authorities having taken a final decision on the bids submitted by the bidders pursuant to the earlier NIT dated 02.09.2022, the issuance of 3rd NIT dated 29.10.2022 inviting online tender for the same work, for which, NIT dated 02.09.2022 had been issued pursuant to which, there was a participation of 16 bidders, I find the action of the respondent authorities in issuing the impugned 3rd NIT dated 29.10.2022 to be an arbitrary exercise of power, uninformed by reason(s).

14. In view of the above, this writ petition is allowed by setting aside the impugned NIT dated 29.10.2022 issued by the Executive Engineer, Sagalee Division PWD, AP, Sagalee vide No. SLD/W-22/2022-23/1019 for the work "*Construction of Road from Marung Gika to Panior Bridge Point via Sarchgai, Mate, Kujuk and Pan 21.00 Km under NESIDS (3rd call)*" with a further direction to the respondent authorities to take a decision on the bids submitted pursuant to NIT dated 02.09.2022 and notify the decision taken to the bidders.

15. Writ petition stands disposed with the above direction.

JUDGE

Comparing Assistant