

GAHC040016662023



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

Case No. : WP(C)/589/2023

Lokam Takuk
Son of Lokam Tari, Contractor, Permanent resident of Village Moruk, PO Damin, PS
Koloriang, District Kurung Kumey, State Arunachal Pradesh. Mobile 8418513224

VERSUS

The State of AP and 5 Others
represented by the Chief Secretary, Arunachal Pradesh, Civil Secretariat, Itanagar, Pin
791112: The Secretary
Age: 0
Occupation :

3: The Joint Secretary
Age: 0
Occupation :

4: The Secretary
Age: 0
Occupation :

5: The Director
Age: 0
Occupation :

6: The Project Director
Age: 0
Occupation :

Advocate for the Petitioner : Nannu Yubi

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 06.12.2023
(K.R. Surana, J)

Heard Mr. U. Deka, learned counsel for the petitioner and Mr. R.H. Nabam, learned Addl. Advocate General for the State, assisted by Ms. P. Pangu, learned Govt. advocate for the State.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the gazette notification no. 9 published in the Arunachal Pradesh Gazette dated 02.11.2020 by which the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Developments and Promotional) (Amendment) Act, 2020 was notified.

3. The grievance expressed by the learned counsel for the petitioner is that the authorities have not received the tender submitted by the petitioner.

4. *Ex facie* the said submission appears to be incorrect and false because in the synopsis the petitioner has mentioned that he could not participated in some NIT process and that the tender should have been opened on 29.11.2023, but without corrigendum the date of opening was rescheduled. It is not the case of the petitioner that he wanted to participate and before the closing date the respondent authorities have refused to accept the tender.

5. The grievance of the petitioner is that he is a class IV contractor and he is aggrieved by the said amending Act by which the Works Department in the

State are permitted to enable contractors of two separate classes or more to submit their bids. The learned counsel for the petitioner has submitted that there are several instances when the tenders/ bids submitted by the petitioner were rejected merely because a higher class of contractor had participated and therefore, the petitioner who was from class IV category of contractors was ousted. It is also projected that the petitioner had requested the respondent authorities to give separate financial bidding limit class wise contractors but the same was not responded to and the eligibility criteria prescribed in the said Act was not modified. Hence, this writ petition.

6. The learned Addl. Advocate General, Arunachal Pradesh has pointed out that in the writ petition it is projected that the petitioner had not participated in the NIT dated 15.11.2023.

7. It is noted from the specific averment made in the petition as well as the synopsis appended to the writ petition that the petitioner could not participated in some NIT process as class IV contractor in the CD Block of Damin, Sangram, Nyapin & Phassang in the Kurung Kumey district and that the tender opening date was revised without proper corrigendum.

8. On examination of the materials appended to the writ petition, it is seen that the petitioner has not annexed any rejection order of his bids on the ground that the other class of contractor was found more suitable and therefore, the petitioner being a class IV contractor, was rejected. Moreover, in the considered opinion of the Court, if bidding is permitted to more than one class of contractor it would give a wider participation to the different classes of contractors and in the process contractor of a class who is of lower category is also permitted to submit his bid along with higher class of contractor and therefore, it appears that the policy of the government, which is notified in form

of the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentives, Developments and Promotional) (Amendment) Act, 2020 reflects that government policy of permitting more competition in its bidding process.

9. Therefore, the Court is of the considered opinion as this writ petition is not supported by any rejection order of the bids of the petitioner solely because of his class and as nothing contained in the Amendment Act of 2020, having been found to be *ultra vires* the Constitution of India, the Court is not inclined to entertain this writ petition. Moreover, as incorrect statement has been made by the learned counsel for the petitioner at the bar, this writ petition also deserves to be dismissed on that ground also.

10. Accordingly, this writ petition stands dismissed at the motion stage without issuance of notice on the respondents.

JUDGE

JUDGE

Comparing Assistant