

GAHC010065792023



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

Case No. : WP(C)/1725/2023

M/S RANA CONSTRUCTION AND ENGINEERS PVT LTD
SURAJ COMPLEX, ULUBARI CHARIALI, KAMRUP (M), GUWAHATI-07,
ASSAM, REP. BY ONE OF ITS DIRECTORS RANA ZAMAN, AGED ABOUT
51YEARS,
S/O- ALHAJ RAHMAN ALI,
R/O- HOUSE NO- 62, RAHMAN MANSION, SOUTH SARANIA, P.O- ULUBARI,
DIST- KAMRUP (M), ASSAM, GUWAHATI-07

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SPECIAL SECRETARY TO
THE GOVT. OF ASSAM. PUBLIC WORKS DEPARTMENT (ROADS) , ASSAM
DISPUR, GUWAHATI 6

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT(BORDER ROADS)
CHANDMARI GUWAHATI 78100

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

27.03.2023

Heard Shri K.N. Choudhury, learned Senior Counsel assisted by Shri R.M. Deka, learned counsel for the petitioner. Also heard Shri B. Gogoi, learned Standing Counsel, PWD.

Considering the nature of the grievance and as agreed to by the parties, this writ petition is taken up for disposal at the motion stage itself.

The present petition has a chequered history. Initially the petitioner had approached this Court challenging the requirement to submit Additional Performance Security. The petitioner was unsuccessful in the said challenge and there was dismissal of the writ petition which was also affirmed by the Division Bench. Thereafter, the petitioner had approached the authorities with a prayer to adjust its entitlement from the said Department towards the head of Additional Performance Security. The said approach was also rejected, for which the present case has been filed. The learned Senior Counsel for the petitioner has submitted that the present case pertains to only one of the four packages in which the petitioner is ready and willing to pay the Additional Performance Security which however has not been accepted on the ground that the authorities in question namely the PWD has gone for a re-tendering process.

It is also the contention of the petitioner that before such re-tendering, the petitioner had initiated the work and had claimed to have done about 10 %.

This Court vide the earlier order dated 24.03.2023 after observing the

background had directed Shri Gogoi, the learned Standing Counsel, PWD to obtain instructions and also directed this matter to be listed along with the other writ petition which were to be listed today and in fact have been listed.

Shri B. Gogoi, learned Standing Counsel, PWD however has informed this Court that the Department is not in a position to accept the offer as the work in question has already been given for re-tendering.

This Court has given its anxious thoughts to the facts and circumstances.

The petitioner had raised a grievance on the issue of requirement of additional performance security in the works on certain grounds which however have not been accepted by this Court. Thereafter, though there have been other developments, in this case the petitioner has expressed his willingness to make the said deposit which has been rejected only on the ground that the work in question has been re-tendered. Though the rejection by the authorities *per se* does not appear to be wholly unreasonable as the work has already been put to re-tender, considering the peculiar facts and circumstances, this Court in exercise of its equitable jurisdiction, as an exceptional case directs the authorities in question namely the Chief Engineer, Public Works Department, Border Roads to reconsider the offer made by the petitioner regarding his willingness to pay the entire amount of the Additional Performance Security only for the work in question namely Package No. AS-17-260. The learned Counsel for the petitioner has also conceded that the offer made is only in respect of the said work and for the other three works, he is not in a position to make such offer.

The reconsideration directed to be made may be done expeditiously and preferably within a period of 10 (ten) days from today. It is further directed that

till such decision is arrived at and communicated, no steps be taken in the process of re-tendering of the job in question.

With those observations, the instant writ petition is disposed of.

JUDGE

Comparing Assistant