

GAHC010111902023



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

Case No. : WP(C)/2995/2023

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, AGE ABOUT 51
YRS, S/O- ALHAZ 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 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PUBLIC WORKS ROADS DEPARTMENT, ASSAM
SECRETARIAT, DISPUR, GUWAHATI- 06.

2:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BORDER ROADS)
CHANDMARI
GUWAHATI
ASSAM-781003

3:THE EXECUTIVE ENGINEER
PWD
MORIGAON DISTRICT TERRITORIAL ROAD DIVISION
MORIGAON
ASSAM

4:THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF RURAL DEVELOPMENT
RURAL CONNECTIVITY (RC) DIVISION
KRISHI BHAVAN
NEW DELHI-01

5:NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI-11000

Advocate for the Petitioner : MD S HOQUE

Advocate for the Respondent : SC, PWD

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02-06-2023

Heard Mr. S. Hoque, learned counsel for the petitioners as well as Mr. B. Gogoi, learned standing counsel for the PWD appearing for the respondent nos.1 to 3 and Mr. A.K. Nath, learned CGC for the respondent nos.4 and 5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the impugned NIT dated 16.05.2023 in respect of the work of "upgradation of roads from T05-Dimaruguri Kamarpur Road including cross drainage works and routine maintenance of the works for five years under Package No.AS-17-260, PMGSY-III, Batch 1, 2022-23" issued by the Chief Engineer, PWD (Border Roads) Assam (respondent no.2).

3. In brief the case projected by the petitioner is that he had previously participated in the NIT dated 21.05.2022 and the petitioner was selected for the work and was issued a letter of acceptance at the contract price of Rs.18,39,13,378.00 and the petitioner was asked to give a performance security

for an amount of Rs.45,98,000/- and an additional performance security of Rs.2,12,29,000.00 for quoting 17.86% below the estimated construction cost. Aggrieved by the demand in respect of additional performance security by the respondent no.2, the petitioner had approached this Court by filing WP(C) 5301/2022.

4. This Court by order dated 07.02.2023, dismissed the said writ petition on the ground that the legality and validity of the tender clause was not in challenge. The respondent no.2 again issued a notice of demand for submitting performance security as well as additional performance security. This time the petitioner submitted a representation dated 22.02.2023 to the respondent no.2 to adjust the additional performance security in the manner prescribed.

5. The petitioner has referred to undertakings which is not relevant and therefore not narrated herein. It would suffice to mention that the petitioner had approached this Court again by filing WP(C) 1057/2023 for a direction to the respondent no.2 to consider the representation dated 22.02.2023 and not to take any coercive steps. This Court issued a notice of motion by order dated 24.02.2023 and the respondents were directed not to take any coercive action against the petitioner in respect of the additional performance security till 13.03.2023.

6. On 28.02.2023, a fresh NIT was issued by the respondent no.2 by cancelling the letter of acceptance dated 06.08.2022 issued to the petitioner. The petitioner now claims that he was ready and willing to deposit the

additional performance security in terms of letter dated 16.02.2023, and as the date had expired, the petitioner had approached this Court again by filing WP(C) 1725/2023 for a direction to allow the petitioner to deposit the additional performance security. This Court by order dated 27.03.2023 asked the respondent no.2 to reconsider the offer of the petitioner within a period of 10 days.

7. The respondent no.2 by a speaking order dated 10.04.2023 rejected the prayer of the petitioner and accordingly, aggrieved by the rejection of his prayer the petitioner had approached the Court again by filing WP(C) 2146/2023 to assail the speaking order. This Court by order dated 20.04.2023, observed that any action taken in pursuance to the speaking order dated 10.04.2023 shall be subject to the outcome of the writ petition. In the meantime, the respondent no.2 had invited a fresh e-tender dated 16.05.2023 for the same work and the aggrieved petitioner approached this Court again by filing the present writ petition.

8. The learned standing counsel for the PWD has submitted that the petitioner has withheld vital information regarding dismissal of writ appeal no.135/2023 by order dated 28.04.2023 on withdrawal. Accordingly, it is submitted that the petitioner is disentitled to any relief. It is also submitted that by virtue of order dated 20.04.2023, this Court had already protected the interest of the petitioner for which he would be disentitled to any relief in this writ petition.

9. The Court has observed from the contents of the order dated 27.03.2023 passed in WP(C) 1725/2023 that the petitioner had been offered 3 works in addition to the work in question. A statement made by the learned counsel for the petitioner has been recorded in the order that the petitioner is not in a position to offer additional performance security in respect of three other works, and that he was offering the additional performance security in respect of package no.AS-17-260. Under such circumstances, when it is a matter of record that the petitioner had not been able to offer additional performance security in respect of the other three works, the natural corollary/fallout would be that the letter of acceptance issued in respect of three other works must have been cancelled, although no material to that effect is annexed in this writ petition.

10. Therefore, when the petitioner is already a defaulter in respect of three other works and despite four rounds of writ petitions, the additional performance security in respect of package no.AS-17-260 was never provided, yet if the proposition of the petitioner is accepted, then till the dispute regarding the speaking order passed on 10.04.2023 is not adjudicated by this Court, the Court would have to stay all the subsequent tenders which shall affect public interest.

11. Moreover, the Court finds that the bid security offered by the petitioner is already been appropriated in connection with the package no.AS-17-260, which is reflected in the speaking order dated 10.04.2023. Therefore the Court finds that as the interest of the petitioner is secured by virtue of order dated 20.04.2023 passed in WP(C) 2146/2023, no case has been made out for

interference with the present tender process bearing NIT no.CE/PMGSY/01/2022-23/62 dated 16.05.2023 issued by the Chief Engineer, PWD (Border Roads), Assam.

12. It is further added that the Court is conscious of the fact that by the passage of time, there is a likelihood of price escalation and as the work in question relates to the construction and maintenance of roads under PMGSY scheme, it would not be in public interest to stay the tender process. However, it is provided that in the event the petitioner is aggrieved by the tender process it would be open to the petitioner to approach the Civil Court to claim compensation in accordance with law.

13. In view of the discussion above, the Court does not find any merit in this present writ petition and the same is dismissed without issuing notice on the respondents.

JUDGE

Comparing Assistant