

GAHC010172662023



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

Case No. : WA/296/2023

1.PURBANCHAL BUILDTECH PRIVATE LIMITED AND ANR.
A REGISTERED PRIVATE LIMITED COMPANY HAVING ITS REGISTERED
OFFICE AT HOUSE NO. 2, SEWALI PATH, FA AHMED NAGAR, SIX MILE,
GUWAHATI-781022, KAMRUP (M), ASSAM TO BE REPRESENTED BY ONE
OF ITS AUTHORIZED DIRECTOR VIZ. MD MATLEBUDDIN AHMED.

2: MD MATLEBUDDIN AHMED,
S/O GIAS UDDIN AHMED,
DIRECTOR, PURBANCHAL BUILDTECH PRIVATE LIMITED
A REGISTERED PRIVATE LIMITED COMPANY HAVING ITS REGISTERED
OFFICE AT HOUSE NO. 2, SEWALI PATH, FA AHMED NAGAR,
SIX MILE, GUWAHATI-781022, KAMRUP (M), ASSAM.

VERSUS

1.THE STATE OF ASSAM AND 5 ORS.,
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PWD (NH WORKS), ASSAM, DISPUR,
GUWAHATI-781006.

2:THE CHIEF ENGINEER, PWD (NH WORKS), ASSAM
CHANDMARI, GUWAHATI-781003, ASSAM

3:THE CHIEF ENGINEER, PWD (BORDER ROADS), ASSAM
CHANDMARI, GUWAHATI-781003, ASSAM

4:THE TECHNICAL BID EVALUATION COMMITTEE,
REPRESENTED BY ITS CHAIRMAN,
CHIEF ENGINEER, PWD (NH WORKS), ASSAM,
GUWAHATI-781003, ASSAM.

5:SANJAY KUMAR SINGH,
CHIRWAPATTY ROAD, TINSUKIA,
P.O.-TINSUKIA, ASSAM-786125.

6:BIRMIWAL AND ASSOCIATES,
CHARTERED ACCOUNTANTS,
HEAD OFFICE 404 COMMERCE HOUSE,
AT ROAD, ATHGAON, GUWAHATI-781001,
KAMRUP (M), ASSAM.

For the Appellant(s) : Mr. U.K. Nair, Senior Advocate assisted by
Mr. H.K. Das, Advocate.
For the Respondent(s) : Mr. D. Nath, Senior Government Advocate,
Assam.
Mr. B.D. Konwar, Senior Advocate assisted by
Mr. H. Agarwal, Advocate for respondent No.5.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

23.08.2023

The instant intra-Court writ appeal is directed against the order dated 31.07.2023 passed by the learned Single Judge in WP(C) No.3958/2023, whereby the prayer for interim relief made by the appellants in the writ petition challenging rejection of its technical bid in a tender process initiated vide NIT dated 11.04.2023 for the work described as "*Periodic renewal of Makum-Rupai Bypass from Km 0.000 to Km 23.482 (L=23.482 Km) under ARP for 2022-23 under EPC mode under Dibrugarh NH Division in the State of Assam. (Job No. TA/15/200-23/266) Package No.: PWD-NH(R.)/DIB/2023-24/EPC/01*", was denied.

2. Mr. U.K. Nair, learned Senior counsel representing the appellants has raised several grounds for questioning the impugned order denying the prayer for interim relief. He urges that the learned Single Judge has expressed opinion of the merits of the matter and thus, passing an order rejecting the prayer for interim relief without finally deciding the writ petition, would lead to a situation wherein the appellant is left

remediless on all counts. He further submits that on almost identical grounds on which the appellants' technical bid was rejected, the private respondent i.e. respondent No.5 has been held to be responsive bidder. Despite this fact being pointed out, the authorities have, till date, not taken any action against the private respondent in that regard.

3. Mr. B.D. Konwar, learned Senior counsel representing the respondent No.5 and Mr. D. Nath, learned Senior Government Advocate, Assam submit that it would be better if the writ petition pending before the learned Single Judge is decided on merits because any comment on the merits of the matter by the Division Bench in this writ appeal would prejudice the right of appeal of the party/parties concerned.

Mr. D. Nath assures that, till the writ petition is decided, the work order shall not be issued to the respondent No.5.

Needless to say that the appellants shall be at liberty to raise all objections before the learned Single Bench regarding the arbitrariness of qualifying criterion applied by the authorities while evaluating the bids. It is also made clear that, in case of failure of the appellants in their challenge to the rejection of its technical bid, all consequences will follow as per law.

4. On the request of Mr. D. Nath, it is further clarified that the tendering authorities will be at liberty to take recourse of Clause 2.6 of the Tender Conditions for seeking explanation/additional information from the parties, if so advised.

5. Learned counsel representing the parties are given liberty to request the learned Single Judge to expedite disposal of the aforesaid writ petition.

The writ appeal is disposed of in the above terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant