

GAHC040000172024



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

Case No. : Cont.Cas(C)/1/2024

M/s Khenewa Group
Office at Waii complex, Abotani Colony, Itanagar, AP represented by its proprietor
Shri Rumak Jomoh, s/o Shri Sam Jomoh, near Rajdhani Petrol Pup, A Sector,
Naharlagun, Papumpare District, AP

VERSUS

Mimum Tayeng
Secretary, Women and Child Development, Govt of AP, Itanagar 2: T P Loye
Age: 0
Occupation

Advocate for the Petitioner : Hage Lampu

Advocate for the Respondent : Subu Tapin

-BEFORE-

HON'BLE MR. JUSTICE KALYAN RAI SURANA

31.05.2024

Heard Mr. H. Lampu, learned counsel for the petitioner as well as Mr. S. Tapin, learned counsel for the respondent.

2. Alleging non-compliance of the order of this Court dated 08.08.2023,

passed in WP (C) 255 (AP) 2023, the present contempt petition has been filed under Article 215 of the Constitution of India read with Sections 11 and 12 of the Contempt of Courts Act, 1971.

3. The case of the petitioner is that this court by order referred above, had passed the following directions:-

“Accordingly, in view of the agreement reached between the parties; this writ petition shall stand disposed of, by setting aside the summary of the technical bid evaluation, made by the Board on 06.04.2023 (Annexure- 4 to the writ petition), recommending re-tender of the Notice Inviting Tender, in question, as per Rule 144 and 173 (xix) of the General Financial Rules, 2017; and the order, dated 26.04.2023 (Annexure-5 to the writ petition), issued by the Secretary, Department of Women and Child Development, Govt. of Arunachal Pradesh, Itanagar approving the recommendation of the Board for re-tender vide the technical bid evaluation made on 06.04.2023, with a further direction to the respondent authorities to open the financial bid of the petitioner submitted pursuant to the Notice Inviting Tender, dated 02.03.2023, issued by the Director, Department of Women and Child Development, Govt. of Arunachal Pradesh, Itanagar, for procurement of 12450 medicine kits and upon evaluation of the petitioner's financial bid; if it is found that the financial bid submitted by the petitioner fulfils the requirements under Rule 173 (xx) (c) of the General Financial Rules, 2017; the bid submitted by the petitioner may be considered appropriately, in

accordance with law.

It is hereby ordered accordingly".

4. Certified copy of the said order was served upon the Secretary, Women and Child Development Department on 10.08.2023. However, within the reasonable time period, the said order was not complied with. Accordingly, the petitioner served another letter dated 01.11.2023 to the Director, Women and Child Development Department put the said authority to notice that if the financial bid of the petitioner is not opened within a period of 7 (seven) days shall be constrained to file a contempt petition.

5. The notice issued by the Court, having been served upon the respondent, the respondents have appeared and filed their affidavit on 02.02.2024, whereby, it is projected that the respondent authorities had decided to open the financial bid of the petitioner and the date of opening of e-bid was fixed on 15.12.2023. However, in the meanwhile, the Earnest Money Deposit of the petitioner has already been returned which was required before the financial bid is opened. Accordingly, the petitioner was sent a letter dated 15.12.2023 for submission of the EMD and accordingly, the petitioner by letter dated 15.12.2023, had submitted his EMD by way of a Demand Draft.

6. It is further projected that in the intervening period, the respondent's department had received a copy of the WA No. 35 (AP) 2023 and I.A. (C) No. 189 & 192 (AP) 2023 filed by one M/s. Popu Enterprises, challenging

the order dated 08.08.2023, passed by this Court in WP (C) 255 (AP) 2023. Accordingly, the respondents had taken a view from the Law and Judicial Department in the matter of opening of financial bid and they were advised that since there was no specific order from the Appellate Court regarding the stay of the operation of the order passed by the learned Single Judge, there was no bar as such preventing the Department from opening the financial bid. However, the department may await till the Writ appeal is decided by the Appellate Court. Accordingly, the financial bid of the petitioner could not be opened.

7. The petitioner by filing affidavit-in-reply has produced a copy of the order dated 04.03.2024, passed by the Division Bench of this Court in WA No. 35/2023, wherein, this Court had issued the following directions:-

“In view of the fact that the tender was for the purpose of supply of medicines, considering the urgency involved, we clarify that there is no bar for the authorities to procure the supplies from the writ petitioner in terms of the directions passed by the learned single Judge, however, such order(s) would be subject to the final outcome of this writ appeal.

List again on 09.04.2024”.

8. The Division Bench of this Court took note of the urgency involved in the matter of supply of medicines and it was clarified that there is no bar for the authorities to procure the supplies from the writ petitioner in terms of the directions passed by the learned Single Judge. It was also provided such order would be subject to final outcome of the writ appeal.

9. In view of the said factual position and considering the submission made by the learned counsel for the respondent, this Court is of the considered opinion that when the orders passed by the learned Single Judge is made subject to final outcome of the writ appeal, the action of the respondents to hold the opening of the financial bid cannot be said to be a wilful and deliberate disobedience of the order of this Court dated 08.08.2023.

10. At this stage, the learned counsel for the respondents has produced a copy of the financial bid evaluation carried out on 23.04.2024 and the financial bid of the petitioner was opened. We find that there is a note appended thereto that the financial bid was opened and the final recommendation shall be made after evaluation of the rates of the medicines quoted by the petitioner in the market rate of the medicine in compliance with the judgment of this Court dated 08.08.2023 and final outcome in WA No. 35 (AP) 2023 and I.A. No. (c) 189 & 192 (AP) 2023.

11. The copy of the said proceeding is retained as a part of the record.

12. In view of the fact that though belatedly, financial bid of the petitioner has been opened and that the respondents have taken note of the order passed in WA No. 35 (AP) 2023, we reiterate that no case of wilful and deliberate disobedience of the order of this Court has been made out.

13. Accordingly, this Contempt petition stands dismissed.

JUDGE

Comparing Assistant