

GAHC040000812024



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

Case No. : WP(C)/29/2024

M/S Agam Construcction
proprietor Shri Tarem Darang, head office at Mirbuk, PO Pasighat, East Siang
District, AP represented by Shri Mimar Dirchi, S/o Domi Dirchi, power of Attorney
holder of M/s Agam Construction permanent resident of Lipu Village, Likabali, PO
Likabali, Lower Siang District, AP

VERSUS

The State of AP and 7 Ors
represented by the Secretary, RWD, Govt of AP, Itanagar 2:The Chief Executive
Officer
Age: 0
Occupation :

3:The Chief Engineer
Age: 0
Occupation :

4:The Superinteding Enginer
Age: 0
Occupation :

5:The Executive Engineer cum PIU
Age: 0
Occupation :

6:The Chairman
Age: 0
Occupation :

7:M/S I T Enterprises

Age: 0

Occupation :

8:M/s Sunwin Energy and Infra Private Limited

Age: 0

Occupation

Advocate for the Petitioner : Jumgam Jini

Advocate for the Respondent : Gimi Tarak

**BEFORE
HONBLE MR. JUSTICE S.K.MEDHI**

ORDER

30.01.2024

Heard Shri B. Picha, learned counsel for the petitioner. Also heard Shri G. Tarak, learned Standing Counsel, RWD.

2. When this matter was taken up on 24.01.2024, the following order was passed:

“Heard Mr. B. Picha, learned counsel for the petitioner.

The petitioner had participated in a Notice Inviting Tender (NIT) for construction and maintenance of the MRLO4-LKB ALG BRO road to Dipa, bearing package No. AR2106046, by submitting all necessary documents. Such bids were submitted online as per requirement. One of the clauses of the tender is with regard to submission of affidavits to make a declaration that the documents and its contents were correct and such provision is given in Clause 4.4 B (a) (ii) of Section 2 of the ITB. It is the

categorical case of the petitioner that the said requirement was fulfilled and in the writ petition itself, 2 (two) number of affidavits fulfilling the aforesaid requirement has been annexed. The learned counsel accordingly submits that the rejection is prima-facie not sustainable.

Shri G. Tarak, learned Standing counsel, RWD, however, submits that the financial bid has already been opened. He, however, fairly submits that he is not aware as to whether the work order has been allotted or not.

In view of the above, list for motion again on 30.01.2024 to enable the learned Standing Counsel, RWD to obtain necessary instructions. Instruction is also required to be taken on the specific issue by verifying the bid documents of the petitioner from the official portal.

Shri Picha, learned counsel for the petitioner is required to furnish an extra-copy of the writ petition to the learned Standing Counsel, RWD to facilitate him to obtain instructions.

To balance the equities, it is provided that if the work allotment order has not been issued till now, the same is not to be issued till the next date fixed. The aforesaid direction however, would be reconsidered after receipt of the instructions.”

3. Today, Shri Tarak, learned Standing Counsel has submitted that he has obtained the instructions.

4. The learned Standing Counsel, RWD by referring to the affidavit which has been annexed to the writ petition itself as a part of the Annexure 8 series has submitted that the affidavit itself was defective inasmuch as, the said affidavit mentioned that the Notice Inviting Tender bid was issued by the Chief Executive Officer (CEO), ARDDA, Itanagar. He however submits that the NIT was actually issued by the Executive Engineer/PIU, Rural Works Department, Likabali Division, Lower Siang District, Arunachal Pradesh. In this regard, he has referred to the E-procurement notice which has also been annexed as Annexure-3 to the writ petition as a part of the Standard Bidding Document.

5. The aforesaid ground cited on behalf of the Department is countered by the learned counsel for the petitioner by referring to a corrigendum dated 09.10.2023 which has been annexed as Annexure 4. As per the said corrigendum, the employer which was given as the Executive Engineer, RWD Likabali Division is to be read as the Chief Executive Officer (CEO), ARDDA Itanagar, Arunachal Pradesh. For ready reference the contents of the corrigendum is extracted hereinbelow-

“GOVERNMENT OF ARUNACHAL PRADESH

OFFICE OF THE EXECUTIVE ENGINEER RURAL WORKS DEPARTMENT

LIKABALI : DIVISION : LOWER SIANG DISTRICT.

No. DPIU/LKB/PMGSY-III/2023-24/04

Dated Likabali the 9th October 2023

CORRIGENDUM

This is for general information to all the intending bidders that the following corrections have been made:

1. That, name of Employer may be read as **The Chief Executive Officer**

(CEO), ARRDA Itanagar, Arunachal Pradesh instead of the **Executive Engineer, RWD Likabali Division, Lower Siang District Arunachal Pradesh** as mentioned in the **Appendix to ITB/ Clause reference 1.1** of SBD.

2. That, the affidavit should be on a non-judicial stamp paper of Rs.10/- or above.

Other terms and conditions remain same.

Sd/-

Executive Engineer"

6. The contention of the Department is that since the contents of the affidavit was incorrect, the rejection of the bid of the petitioner in the technical evaluation is proper and justified.

7. The aforesaid objection has been duly considered.

8. The affidavit was submitted by the petitioner as a part of the requirement of the NIT on 17.10.2023 which was after the corrigendum dated 09.10.2023. To remove any doubts, the relevant contents of the affidavit is extracted hereinbelow-

*"1. I hereby certify that all the information furnished with the bid submitted online in response to the notice inviting bid number AR2106046 dated 03/10/2023 issued by **The Chief Executive Officer (CEO), ARRDA, Itanagar, Arunachal Pradesh** for **MRL04-LKB ALG BRO***

road to Dipa, Package No. AR2106046 are concerned."

9. This Court has noticed that apart from the name of the issuing authority, the petitioner has mentioned his bid number as well as the details of the work.

10. At this stage, Shri Tarak, learned Standing Counsel has submitted that corrigendum was not pertaining to the aspect of issuing authority.

11. Even if the aforesaid submission is taken into consideration, this Court is of the view that the purpose of the affidavit is to certify that the information furnished with the bid are correct and true and there is nothing in the said affidavit which would raise ambiguity with regard to the purpose of submitting the affidavit which was in regard to the work in question. As mentioned above, the number and other details of the work has been clearly mentioned in the affidavit. This Court is of the opinion that issuance of the corrigendum on 09.10.2023 whereby the employer has been stated to be the authority whose details have been stated in the affidavit, the same cannot be held to be defective in any manner.

12. The purpose of issuing of NIT for distribution of State largesse is only to ensure transparency and fairness in the process whereby one of the main objective is to have a fair competition which is in sync with the public interest.

13. In view of the above, this Court is of the opinion that rejection of the bid of the petitioner on technical grounds is unjustified and accordingly interfered with.

14. This Court in its last order has observed that though financial bids were opened, the work has not been allotted.

15. Since it is the requirement under the NIT to simultaneously submit the

technical as well as the financial bid, the financial bid of the petitioner is now required to be opened and compared with the financial bids of the other eligible bidders and thereafter, the work may be allotted to the L1 bidder in accordance with law.

16. Accordingly, this writ petition stands disposed of.

JUDGE

Comparing Assistant