

GAHC040001302024

2024:GAU-AP:909



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

WP(C)/53(AP)/2024

1. **Shri Gichik Tami** (Proprietor of M/s G.T. Enterprises),
S/o- Late Gichik Takkar,
R/o- Village Poda,
P.O/P.S- Parsi Parlo,
Dist.- Kurung Kumey, Arunachal Pradesh.

...PETITIONER

-VERSUS-

1. **The State of Arunachal Pradesh**, represented by the Chief Secretary, Govt. of A.P., Itanagar.
2. **The Director, Rural Development Department**,
Itanagar, Arunachal Pradesh.
3. **The Joint Director (RE)**,
Department of Rural Development,
Govt. of Arunachal Pradesh, Itanagar.
4. **The Block Development Officer**,
CD Block, Sarli, Koloriang,
Dist.- Kurung Kumey, Arunachal Pradesh.
5. **The Project Director (PD)**,
District Rural Development Agency (DRDA),
Dist.- Kurung Kumey, Arunachal Pradesh.

6. The Tender Evolutoin Board-cum-Tender

Evaluation Authority represented by its Chairman, DRDA,
Koloriang,
Dist.- Kurung Kumey, Arunachal Pradesh.

7. The Nodal Officer, MGNREGA, DRDA, Koloriang,

Dist.-Kurung Kumey, Arunachal Pradesh.

8. M/s N. K. Enterprises,

represented by its proprietor Shri Nangram Kaki, R/o- Nangram
village,
P.O/P.S- Koloriang,
Dist.- Kurung Kumey, Arunachal Pradesh.

....RESPONDENTS

Advocate for the petitioners : Mr. T. Taba, Id. Adv.

Advocate for the respondents : Ms. P. Pangu, Id. Govt. Advt., R-1,
Mr. B. Picha, Id. Adv., R-2 to R-7,
Mr. D. Mazumdar, Id. Sr. Adv., assisted by Mr. T. Garam, Id. Adv.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 10.06.2024

Date of Judgment : 01.10.2024

JUDGMENT & ORDER (CAV)

Heard Mr. T. Taba, learned counsel for the petitioner. Also heard Ms. P. Pangu, learned Government Advocate for the respondent No.1; Mr. B. Picha,

learned counsel for the respondent Nos. 2 to 7 and Mr. D. Mazumdar, learned Senior Counsel assisted by Mr. T. Garam, learned counsel for the respondent No.8.

2. This application is filed under Article 226 of the Constitution of India, seeking the issuance of a writ in the nature of Certiorari or Mandamus, or any other appropriate writ, order, or direction.

3. The brief facts of the case is that; the petitioner is the proprietor of a firm, namely M/S G.T. Enterprises, having its registered office at Dokum Colony, P.O. & P.S. Itanagar, Dist. Papum Pare, Arunachal Pradesh. It is categorized as a civil firm enlisted under the provisions of the Arunachal Pradesh Enlistment of Contractors in Works Department Rules, 2008, to engage in the business of supply and construction. Respondent No. 5 issued a notice inviting tender dated 11.08.2023 for the supply and procurement of materials pertaining to MGNREGA works 2023-24 for CD Block Sarli under Kurung Kumey District. The estimated cost for the work, as stated in the NIT, was Rs. 20,241,845.00 (Rupees two crore two lakhs forty-one thousand eight hundred forty-five) only.

4. Accordingly, the petitioner participated in the aforementioned tender process by submitting his bid. Four firms submitted their respective bids for the tender: M/S G.T. Enterprises (petitioner), M/S Pacho Enterprise, M/S P. Mero Enterprises, and M/S N.K. Enterprise (the private respondent herein). According to the NIT, the date for opening the tender papers, including both technical and financial bids, was fixed for 05.09.2023, and the time for completion of work was set from 01.08.2023 to 31.03.2024. However, the respondent authority took

considerable time to evaluate the bids submitted. Due to the delay in finalizing the tender, the petitioner developed reasonable doubts regarding potential foul play in the tendering process. Consequently, he filed an RTI application through a friend on 12.01.2024 before respondent No. 4, seeking information regarding the finalization of the tender process and details about the submissions of tender documents by all participating firms.

5. Respondent No. 4 forwarded the request to the Assistant Project Officer (Technical), Nodal Officer, MGNREGA, to furnish the requested information. The petitioner received the information vide letter dated 24.01.2024 issued by the APIO for the Project Director, DRDA, Kurung Kumey. After reviewing the information, the petitioner learned that the Tender Evaluation Board had opened the technical bids of all the tenderers. Subsequently, respondent No. 5 prepared a comparative statement dated 30.10.2023, which indicated that the tender amount quoted by the petitioner was the lowest bidder, ranking him as L1. The M/S Pacho Enterprise was ranked as L2, M/S P. Mero Enterprises as L3, and M/S N.K. Enterprises as L4.

6. Moreover, the bid amount quoted by the private respondent No.8, i.e. the M/S N.K. Enterprise, exceeded 10%, which violates Clause 8 of Sub-Clause XIII of the NIT's terms and conditions. The bid amount quoted by the private respondent was (-) 12.00003%, which is unacceptable under any circumstances as per the NIT's terms and conditions. During the Board Proceeding Meeting held by the Tender Evaluation Committee on 30.11.2023, it was determined that only the bid submitted by the petitioner was correct, as the other three bidders failed to submit Section 6 Form along with their financial bids, a mandatory

requirement. After considering all bids, the board recommended the petitioner as L1 (lowest bidder) and M/S Pacho Enterprise as L2.

7. It is stated that respondent No. 5 subsequently wrote a letter (No. DRDA/KKD/MGNREGA/NIT-02/2021-22) dated 30.11.2023 to respondent No. 2 for approval and finalization of tenders concerning five CD Blocks, including the present tender in question. However, respondent No. 2 issued an impugned Letter of Intent (for short 'LOI') dated 08-01-2024 in an arbitrary manner, awarding the contract to the private respondent No. 8 and asking him to submit his letter of acceptance within seven days, violating the recommendation made by the Tender Evaluation Board.

8. After learning of the illegal issuance of the LOI dated 08.01.2024 to respondent No. 8, the petitioner raised his grievances before various authorities, including respondent No. 5 as to how without finalizing the tender process the LOI was issued. Respondent No. 5 wrote a letter on 29.01.2024 seeking clarification from respondent No. 2 regarding the issuance of the LOI for various CD Blocks, including the Polosang CD Block, undermining the recommendations made by the Tender Evaluation Board.

9. The petitioner believes that respondent No. 8, in connivance with respondent No. 2, manipulated and engaged in malpractice to secure the contract. Thus, the tender was not conducted freely and fairly. Respondent No. 2 appears to be predetermined to award the contract to respondent No. 8 by any means. Therefore, the petitioner seeks immediate intervention from this Court to protect his fundamental rights. The issuance of the impugned LOI dated 08.01.2024 by the respondent No. 2 to the private respondent No. 8,

without adhering to the recommendations made by the Tender Evaluation Board and in violation of various terms and conditions of the NIT, constitutes a clear abuse of power and position.

10. Furthermore, the technical bid of the private respondent No. 8 has been found defective in various aspects, as noted in the minutes of the Tender Evaluation Board meeting on 30.11.2023. Under these circumstances, the issuance of the LOI for the contract in favor of the private respondent No. 8 is illegal and should be quashed. Although respondent No. 2 issued the LOI to the private respondent No. 8, the tender process has not yet been finalized, as no acceptance letter has been received from respondent No. 8, and no contract has been signed between the private respondent No. 8 and the respondent authority, as indicated in the letter dated 29.01.2024 issued by respondent No. 5 to respondent No. 2. Thus, the balance of convenience lies in favor of the petitioner.

11. The petitioner has a *prima facie* case, and irreparable loss and injury would result if the situation is not remedied. Accordingly, he prays for this Court's intervention, to quash the impugned LOI dated 08-01-2024 issued by the Director, Rural Development Department, Itanagar, Arunachal Pradesh (respondent No. 2) to the private respondent No. 8, and also requests for a direction to the respondent authority to award the contract in favor of the present petitioner.

12. Mr. Taba, learned counsel for the petitioner, has submitted that according to the NIT, the tender is to be finalized by the project director; however, the joint director issued the notice without informing the project director.

Furthermore, there was no clause in the NIT allowing for the re-verification or re-scrutiny of the tender that had already been approved by the project director. He further emphasized that the bid amount quoted by the private respondent No. 8 exceeded 10%, violating Clause 8 of Sub-Clause XIII of the NIT's terms and conditions. The bid amount quoted by the private respondent was (-) 12.0003%, which is unacceptable under any circumstances according to the NIT's terms and conditions. Consequently, respondent No. 2 issued the impugned LOI dated 08-01-2024 in an arbitrary manner, awarding the contract to the private respondent No. 8 and asking him to submit his letter of acceptance within seven days. This action violates the recommendations made by the tender evaluation board and is unjust and illegal, breaching the terms and conditions of the NIT. Therefore, the intervention of this Court is necessary to protect the fundamental rights of the present petitioner, who is otherwise considered to be the L1 bidder.

13. In this regard, Mr. B. Picha, learned counsel for respondents Nos. 2 to 7, has submitted that the submission of bid documents by bidders is always subject to scrutiny by the authorities and tender board members constituted at the district and directorate levels. Furthermore, upon detailed scrutiny of the technical bid documents of the petitioner, it was found that M/S G. T. Enterprise (the firm of petitioner No. 1) is lacking of Tax Clearance Certificate, which constituted a direct violation of Clause 1 (i) of the terms and conditions of the NIT. Consequently, since the firm of the petitioner failed to furnish the Tax Clearance Certificate, the technical bid of the petitioner's firm was disqualified. The delay in the tender process was solely due to litigation filed by some

bidders before this Court. It should also be noted that every aspect of the tender process was made transparent to all bidders. Moreover, by virtue of Clause 15 of the terms and conditions of the NIT, the engineering wing at the directorate level (headquartered in Itanagar) has the power to review any recommendations made by the tender board members at the district level.

14. It is further submitted that Board Proceeding Minute dated 30.11.2023 was conducted by the district-level board; however, as per Clause 15 of the terms and conditions of the NIT, after receiving the bid documents, a three-member board from the engineering wing of the directorate further scrutinized the tender documents on 05.01.2024, using a comparative statement. Upon detailed scrutiny of the technical bid documents, it was found that M/S G. T. Enterprise again lacked a Tax Clearance Certificate, constituting a violation of Clause 1 (i) of the terms and conditions of the NIT. Therefore, the technical bid of the petitioner's firm was disqualified. The technical bid of M/S P. Mero Enterprises was also rejected and disqualified due to non-compliance with the requirement for a signature and seal by bidder in the bid documents. Upon detailed scrutiny, the technical bids of M/S Pacho Enterprise and M/S N. K. Enterprises were found to be qualified. To avoid any complications and promote transparency, the financial bids of M/S Pacho Enterprise and M/S N. K. Enterprises were opened simultaneously. Upon detailed scrutiny of the bids quoted by both bidders, it was found that M/S Pacho Enterprise quoted Rs. 1,82,16,735 (Rupees one crore eighty-two lakhs sixteen thousand seven hundred thirty-five), which is -10.00%, while M/S N. K. Enterprises quoted Rs. 1,77,11,608 (Rupees one crore seventy-seven lakhs eleven thousand six hundred eight), which is -12.50%. Based on

the rates quoted by both bidders, M/S N. K. Enterprises was designated as L1 bidder, and M/S Pacho Enterprise was designated as L2 bidder. After a detailed evaluation of the bid documents, vide Order No. CD(RE)MGNREGA/NIT/2023-24 dated 05.01.2024, the authorities declared a comparative statement of the bidders from Sarli CD Block.

15. He further submitted that the technical bid of the petitioner's firm was rejected, and therefore, it did not qualify to compete in the financial bid; thus, it cannot challenge the issuance of LOI. The petitioner did not challenge the rejection of his technical bid at the time of the technical bid opening which was rejected due to non-availability of a Tax Clearance Certificate. Moreover, it is settled law that an unsuccessful bidder cannot challenge the bid of a successful bidder. He further submitted that, by order dated 05.01.2024, the respondent No. 8, M/S N. K. Enterprises, was designated as the L1 bidder prior to the issuance of LOI dated 08.01.2024. Thus, without challenging the rejection of the technical bid also without challenging the order dated 05.01.2024, the petitioner cannot challenge the issuance of LOI dated 08.01.2024.

16. Furthermore, subsequent to the issuance of the LOI, the respondent authority entered into a Deed of Agreement dated 31.01.2024, with the private respondent No.8. Based on this agreement, the authority issued a supply order on the same date, demanding the supply of various items. He further submitted that the act of a subordinate officer seeking clarification from a senior officer constitutes a complete act of insubordination.

17. Mr. Picha, learned counsel for the respondents, has submitted that no fundamental right of the petitioner has been violated that would warrant the invocation of this Court's writ jurisdiction. If the petitioner is genuinely aggrieved by the decision of the respondent authorities, he has an alternative remedy to approach the civil forum. Where a clear remedy is available to the petitioner, but, he cannot seek remedy by filing a writ petition. Furthermore, the interim prayer made by the petitioner has

become infructuous, as many subsequent developments have occurred after the issuance of the LOI, which have not been challenged in the present writ petition. In fact, to procure an interim order, the petitioner has suppressed material facts from this Court regarding the existence of the order dated 05.01.2024, and the finalization of the tender process. Before filing the present writ petition, the tender process had reached its finality after the completion of the necessary formalities, and thus, the petitioner cannot challenge the LOI dated 08.01.2024.

18. He further submitted that the respondent authorities acted fairly, maintaining transparency while opening both the technical and financial bids. Since this matter pertains to a contractual issue, the parties may approach the civil forum for proper redressal of the grievances. It is a settled position of law that the Court should exercise its discretionary power under Article 226 of the Constitution of India with great care, not merely to address a legal point. Mere disagreement with the decision-making process is not a valid reason for a Constitutional Court to interfere. Thus, he submits that, after observing the necessary formalities and ensuring transparency in the opening of both the technical and financial bids, the bid of the present petitioner was rejected. Therefore, the petitioner cannot challenge the LOI issued in favor of the private respondent No. 8, who was considered the L1 bidder after the opening of the financial bid. He accordingly prays for the dismissal of the instant writ petition.

19. Regarding the issue raised by the petitioner concerning the quoting of (-) 12.00003% by respondent No. 8, it is stated that the terms and conditions of the tender specifically mention that bids may be accepted up to 5% over the justified rates, and variations of up to 10% may be allowed in peculiar circumstances, as outlined in Clause 8, Sub-Clause xiii of the tender's terms and conditions. Furthermore, the justified rates were prepared by the district-level

board based on the market rates for each item. After preparing the justified rates, the district-level board sought approval from the accepting authority. However, in the instant case, no justified rates were prepared while evaluating the financial bids of the bidders. Therefore, due to the absence of justified rates for each item, Section 20.4.3.2 of the CPWD Works Manual, 2014, and Clause 8, Sub-Clause xiii of the tender's terms and conditions were applied. Based on the amounts quoted by the bidders, the L1 bidder was identified and conferred.

20. Mr. Picha, learned counsel for the respondents, relies on the decision made by the Co-Ordinate Bench of this Court in the case of ***Asian Energy Services Ltd. & Anr. vs. Oil India Ltd. & Anr.***, reported in ***2022 (3) GLT 485***. He emphasized paragraph 47 of the judgment, which reads as follows:

“47. Lastly a faint but a shrilling contention was made that the tender has been settled at an astronomically high rate which is almost 20 crores more than the petitioners and as such public interest demands interference. An unsuccessful bidder who failed in the technical bid, his quota for the financial bid has no relevance. OIL in the instant case is the best judge to decide and having decided the same to award the contract to the Respondent No. 2 at the price it has quoted, this Court cannot sit on appeal over the same.”

21. Accordingly, Mr. Picha, learned counsel for the respondents, submits that the present petitioner, being an unsuccessful bidder, cannot claim against the successful bidder. He was declared unsuccessful in the technical bid and, therefore, has no authority to challenge the LOI issued in favour of the private respondent No. 8, who was conferred as the L1 bidder.

22. On the other hand, Mr. D. Mazumdar, learned Senior Counsel for the private respondent, has submitted that the bid documents submitted by the bidders are always subject to scrutiny by the concerned authority and tender

board members constituted at the district level and at the directorate level (headquarters in Itanagar). This is clear from the terms outlined in Clause 15(i), (ii), and (iii) of the tender's terms and conditions.

23. As per Clause 15 of the terms and conditions of the NIT, the engineering wing at the directorate level (headquarters in Itanagar) has the authority to review any recommendations made by the tender board members at the district level. A board proceeding was conducted by the district-level board on 30.11.2023. However, according to Clause 15 of the terms and conditions of the NIT, after the receipt of bid documents, a three-member board from the engineering wing of the directorate further scrutinized the tender documents on 05.01 2024.

24. Following a detailed examination of the technical bids, the bid of respondent No. 8 was accepted, and he was considered the L1 bidder on 05.01 2024, prior to the issuance of the LOI dated 05.01 2024. The petitioner's bid was rejected due to the lack of a necessary Tax Clearance Certificate. It is important to note that the order dated 05.01 2024, predates the issuance of the LOI dated 08.01 2024. Thus, having not challenged the order dated 05.01 2024, the petitioner cannot maintain the instant writ petition.

25. Furthermore, the technical bid of the petitioner's firm was rejected due to the absence of the necessary Tax Clearance Certificate, which violated Clause 1(i) of the Notice Inviting Tender. Therefore, the petitioner cannot challenge the acceptance of private respondent No. 8's tender, as no rights of the petitioner has been violated under these circumstances. Additionally, since justified item rates were not prepared, the petitioner cannot allege any illegality in the

acceptance of private respondent No. 8's tender for the purported violation of Section 20.4.3.2 of the CPWD Works Manual.

26. Further, pursuant to the issuance of the LOI dated 08.01.2024, the authorities entered into a Deed of Agreement with the private respondent No. 8 on 31.01.2024. Based on this agreement, the authorities issued a supply order on the same date, demanding the supply of various items from the said private respondent.

27. Mr. Mazumdar, learned Senior Counsel for the private respondent No. 8, has submitted that no fundamental right of the petitioner has been violated. He can approach the civil forum for proper redressal if he has any grievances against the respondent authorities or the issuance of the order in favor of the present respondent No. 8. Therefore, the petitioner has no *locus-standi* to challenge the LOI, as he was disqualified in the technical bid and has not challenged the order dated 05.01.2024, whereby the present respondent No. 8 was declared the L1 bidder after the financial bid was opened, maintaining clear transparency.

28. He further submitted that the legal deviation may not affect and that can be ignore. More so 30% work has already been completed and in the same time the project directorate cannot seek any clarification from the director who is subordinate to the director as per official rank.

29. In addition to his submission, he relies on the decision of the Hon'ble Supreme Court in the case of ***Reliance Telecom Limited & Anr. vs. Union of India & Anr.***, reported in ***(2017) 4 SCC 269***, and emphasizes paragraph 54 of the judgment, which discusses the view expressed in the case of ***Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd.*** Paragraph 54

of the said judgment reads as follows:

“54. In this context, a passage from [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.](#)²⁵ is worth reproducing:-

We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and 24 2016 (10) SCALE 69 25 2016 (8) SCALE 765 interpret its documents. The constitutional Courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”

30. Further, he relies on another decision passed by the Hon’ble Supreme Court in the case of ***N.G. Projects Limited vs. Vinod Kumar Jain & Others***, reported in **(2022) 6 SCC 127**, in which paragraph 23 of the judgment expressed the view that the “*Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present- day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary ex-pertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful*

exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work".

31. He also relies on the decision rendered by the Hon'ble Supreme Court in the case of ***Raunaq International Ltd. vs. I.V.R. Construction Ltd. & Others***, reported in ***(1999) 1 SCC 492***, where paragraph 27 of the judgment is emphasized and which read as under:

“27. In the present case, however, the relaxation was permissible under the terms of the tender. The relaxation which the Board has granted to M/s Raunaq International Ltd. is on valid principles looking to the expertise of the tenderer and his past experience although it does not exactly tally with the prescribed criteria. What is more relevant, M/s IVR Construction Ltd. who have challenged this award of tender themselves do not fulfil the requisite criteria. They do not possess the prescribed experience qualification. Therefore, any judicial relief at the instance of a party which does not fulfil the requisite criteria, seems to be misplaced. Even if criteria can be relaxed both for M/s Raunaq International Ltd. and M/s IVR Construction Ltd., it is clear that the offer of M/s Raunaq International Ltd. is lower and it is on this ground that the Board has accepted the offer of M/s Raunaq International Ltd. We fail to see how the award of tender can be stayed at the instance of a party which does not fulfil the requisite criteria itself and whose offer is higher than the offer which has been accepted, It is also obvious that by stopping the performance of the contract so awarded, there is a major detriment to the public because the construction of two thermal power units, each of 210 MWs., is held up on account of this dispute. Shortages of power have become notorious. They also seriously affect industrial

development and the resulting job opportunities for a large number of people. In the present case there is no overwhelming public interest in stopping the project. There is no allegation whatsoever of any mala fides or collateral reasons for granting the contract to M/s. Raunaq International Ltd.”

32. In support of his submission, Mr. Mazumdar, learned Senior Counsel, relies on another decision passed by the Co-ordinate Bench of this Court in the case of ***Prism Logistics Private Ltd. & Ors. vs. Union of India & Ors.***, reported in **2023 (2) GLT 563**, and paragraph 39 of the judgment it has been held that:

“39. The natural corollary to the above is that the Petitioner No.1 alone does not have a legal right to challenge the tender process, the tender conditions as well as the award of the contract. At the cost of repetition, it is reiterated that the Petitioner No.1 along with the Proforma Respondent No.7 can only be regarded as a bidder. Under such circumstances, the Petitioner No.1 alone cannot be a person aggrieved to maintain the present writ petition. At this stage, this Court finds it relevant to take note of a judgment of this Court rendered in the case of Merolyn Engineering Works (P) Ltd. & Another vs. State of Assam reported in (2022) 1 GLR 715. In the said case, one of the constituents of a Joint Venture but not the Joint Venture filed a writ petition challenging the allotment of the contract. This Court dismissed the writ petition inter-alia on the ground of maintainability. Paragraph Nos.40 & 41 being relevant are quoted herein below:-

“40. A preliminary objection was raised by Mr. Das, learned senior counsel for the respondent No. 5 in respect of locus standi of the petitioner to file the writ petition challenging the tender evaluation process wherein the petitioner was not the participant as a single entity rather it participated as a joint venture along with M/s. Ananda Shipyard and Slipways Ltd. the other constituent.

41. On perusal of the writ petition it is found that the petitioner No. 1 is M/s. Merolyn Engineering Works (P.) Ltd., a limited company and lead partner in Merolyn Ananda Joint Venture and it is stated in the writ petition that petitioner No. 1

authorised the petitioner No. 2, the executive officer to represent the company, petitioner No. 1. I have perused the joint venture agreement of the petitioner No. 1 and the other constituent, M/s. Ananda Shipyard and Slipways Ltd. which is enclosed to the writ petition and therein under the heading "validity of said agreement" it is stipulated that the joint venture shall be automatically terminated in case the contract in terms of said tender was not awarded. From the affidavit in opposition by the private respondent No. 5 it is seen that vide letter dated 29.5.2020 it was notified to the said respondent No. 5 that its bid dated 21.2.2020 for execution of the work under the said notice inviting bid dated 29.5.2020 was accepted by respondent-ATDCL. In terms of the said letter dated 29.5.2020 and pursuant to the signing of the contract, notice to proceed with the work was issued to respondent No. 5. Now if we consider the validity of the joint venture agreement entered into by the petitioner with its other constituent, M/s. Ananda Shipyard and Slipways Ltd. the said joint venture agreement on the basis of which a jural relationship developed between the petitioner No. 1 and the other constituent of the joint venture came to an end "automatically" after awarding of the contract to the respondent No. 5. Once the validity of said agreement stood terminated "automatically" as such the power of attorney authorizing the present petitioner No. 1 to act on behalf of M/s. Ananda Shipyard and Slipways (P.) Ltd. had also lost its validity. In view of the same, the petitioner under its sole entity without the authority of the other constituent M/s. Ananda Shipyard & Slipways Ltd. has no locus standi to file this writ petition, more so when the petitioner No. 1 sought to be declared as the selected bidder with all consequential reliefs and admittedly the petitioner No. 1 solely does not fall within the definition of "bidder" under clause 1(i) (b) of the General Conditions of Contract. The relief even if the writ petition is allowed, cannot be granted to the petitioner No. 1 alone. Accordingly this writ petition stands dismissed. No cost. Send back the records."

33. After hearing the submissions made by the learned counsels for both sides and perusing the case record along with the documents annexed to the petition, it is evident that the present petition has been filed by the petitioner challenging the LOI issued in favor of the private respondent No.8 on 08.01.2024. According to the petitioner, the opening of both the technical and financial bids was scheduled for 05.09.2023, but this was delayed. The petitioner filed an RTI application through a friend on 12.01.2024 and received information vide a

letter dated 24.01.2024 issued by the APIO for the Project Director, DRDA, Kurung Kumey. It was then the petitioner learned that the tender evaluation board had opened the technical bids and that the respondent No. 5 had prepared a comparative statement on 30.10.2023, wherein the petitioner was found to be the lowest bidder, ranked as L1. M/S Pacho Enterprise was ranked as L2, M/S P. Mero Enterprises as L3, and M/S N.K. Enterprises as L4.

34. Moreover, the petitioner contends that the private respondent No. 8 exceeded the permissible 10%, violating Clause 8 of Sub-Clause XIII of the NIT's terms and conditions. The bid amount quoted by the private respondent was (-) 12.00003%, which is unacceptable under any circumstances according to the NIT's terms. Additionally, the Tender Evaluation Committee, on 30.11.2023, determined that only the bid submitted by the petitioner was correct, as the other three bidders failed to submit Section 6 Form along with their financial bids, a mandatory requirement. Subsequently, the board recommended the petitioner as the L1 bidder and M/S Pacho Enterprise as the L2 bidder.

35. Pursuant to the Tender Evaluation Board's recommendations, respondent No. 5 wrote a letter to respondent No. 2, the Director of the Rural Development Department, for finalization and approval of the tender for the Sarli CD block. However, to the petitioner's surprise, the LOI dated 08.01.2024 was issued in favor of respondent No. 8 in an arbitrary manner, violating the terms and conditions and the recommendations of the Board Evaluation Committee.

36. On the other hand, the respondent authorities and private respondent No. 8 contend that the entire bidding process was transparent and conducted in the

presence of all bidders. They emphasize that the documents submitted by the bidders are subject to scrutiny by the authorities and members of the tender board constituted at both the district and directorate levels. Upon detailed examination of the technical bid documents submitted by the petitioner, it was found that M/S G.T. Enterprise, the petitioner's firm, was failed to furnish the Tax Clearance Certificate, which constituted a direct violation of Clause 1(i) of the terms and conditions of the NIT.

37. Furthermore, as per the State respondents', only M/S Pacho Enterprises and M/S N.K. Enterprises were deemed qualified in the technical bid. According to the respondent authorities, under Clause 15 of the NIT's terms and conditions, the engineering wing at the directorate level (headquartered in Itanagar) has the authority to review any recommendations made by the Tender Board Members at the district level. To avoid complications and promote transparency, the financial bids of the two firms qualified in the technical bid—M/S Pacho Enterprises and M/S N.K. Enterprises (respondent No. 8)—were opened simultaneously.

38. After a detailed scrutiny of the bids, it was found that M/S Pacho Enterprises quoted Rs.1,82,16,735 (Rupees one crore eighty-two lakhs sixteen thousand seven hundred thirty-five), which is -10.00%, while M/S N.K. Enterprises/respondent No.8 quoted Rs.1,77,11,608 (Rupees one crore seventy-seven lakhs eleven thousand six hundred eight), which is -12.50%. Based on the rates quoted, M/S N.K. Enterprises was designated as L1 bidder and M/S Pacho Enterprises as L2 bidder. Accordingly, after a thorough evaluation of the bid documents, the concerned authority issued an order dated 05.01.2024,

declaring a comparative statement of the bidders from the Sarli CD Block.

39. Thus, from the submissions made by the respondents, including private respondent No. 8, and upon perusal of the annexure attached to the petition along with the affidavit-in-opposition, it is clear that the technical bid of the petitioner was disqualified due to the non-furnishing of a Tax Clearance Certificate, which is mandatory for qualifying in the technical bids. Since the petitioner was disqualified in the technical bid, they cannot compete in the financial bid.

40. Moreover, at the time of the opening of the technical bids, only two firms were found qualified out of the four that submitted bids. Among these, private respondent No. 8, M/S N.K. Enterprises, was designated as the L1 bidder in the order dated 05.01.2024, and accordingly, the LOI was issued on 08.01.2024 in his favour. Subsequently, the respondent No.2, i.e. the Project Director, District Rural Development Agency, Koloriang and the private respondent No. 8 entered into a Memorandum of Understanding (MOU) on 31.01.2024 for the supply of various items for MGNREGA works.

41. It is noted that despite the rejection of his technical bid, the petitioner did not challenge this decision. In the present case, he only contested the issuance of the LOI to respondent No. 8, who was designated as the L1 bidder by the committee, without challenging the order passed by the respondent No.3, i.e. the Joint Director (RE), Rural Development Department, Itanagar on 05.01.2024.

42. The petitioner's claim regarding the (-) 12.00003% quoted by respondent No. 8 is clarified by the respondent authorities, indicating that variations of up

to 10% may be permitted under exceptional circumstances, as outlined in Clause 8, Sub-Clause XIII of the tender's terms and conditions. It is the responsibility of the district-level board to prepare justified rates for the items, and after such preparation, the board should seek approval from the accepting authority. However, in this instance, no justified rates were established during the evaluation of the financial bids. Consequently, due to the absence of justified rates for each item, Section 20.4.3.2 of the CPWD Works Manual, 2014, and Clause 8, Sub-Clause XIII of the tender's terms and conditions were applied.

43. Thus, it is evident that the present petitioner was disqualified in his technical due to the non-furnishing of a Tax Clearance Certificate, which is mandatory for all bidders. Though, the respondent No. 5, the Project Director, recommended the petitioner as the L1 bidder; but his recommendation was rejected by respondent authority (R-2) and the Engineering wing at the State level has the power and authority to review recommendation at the District level. It is important to note that respondent No. 5 submitted an affidavit-in-opposition along with other respondents but did not challenge the rejection of his recommendation by respondent No. 2.

44. Additionally, the respondent No. 5 is responsible for scrutinizing documents at the district level, while respondent No. 2 has the authority to accept bids and review recommendations made at the district level. An order was passed on 05.01.2024, based on which the LOI was issued to respondent No. 8, who was considered the L1 bidder. Subsequently, on 31.01.2024, both parties entered into an agreement, and the demand for supply was made accordingly.

45. It is submitted by the learned Senior Counsel, Mr. Mazumdar that pursuant to the LOI and the MOU Agreement dated 08.01.2024 and 31.01.2024 respectively, 30% of the work has already been completed. At this stage, without challenging the order dated 05.01.2024 and without having qualified in the technical bid, the petitioner has no *locus standi* to challenge the LOI dated 08.01.2024.

46. Furthermore, the issue raised by Mr. Taba, learned counsel for the petitioner, it is seen from the case record, the LOI was stayed until the next returnable date, and the authority was directed not to finalize the tender process. This interim order was extended until 06.05.2024. However, on 20.05.2024, the petitioner was directed to file an affidavit-in-reply, with a note that the interim order would be reconsidered at the next listing. Despite this, there was no subsequent request to extend the interim order. It is important to note that an interim order was issued on 05.02.2024, preventing the respondent authority from finalizing the tender process. However, after the issuance of the LOI dated 08.01.2024, which is currently under challenge, both parties mutually agreed to enter into an agreement on 31.01.2024, prior to the stay order. Based on this agreement, the tender was finalized, and the order of supply was placed with respondent No. 8.

47. In the case of ***N. G. Projects Limited*** (supra), respondent No. 8 stated that "*the injunction or interference in the tender leads to additional costs on the State and is also against the public interest*". Further, it has expressed the view that "*the approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-*

making process is after compliance with the procedure contemplated by the tender conditions". More so, the aggrieved party can also approach before the civil forum for its proper redressal". More so, the aggrieved party can seek proper redressal before a civil forum.

48. In the case of ***Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr.***, reported in ***(2016) 16 SCC 818***, the Supreme Court has held as follows-

"The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents."

49. In view of the discussion made above and considering the entire facts and circumstances of this case, it is seen that prior to opening of the financial bid, the technical bid of the petitioner's firm was rejected as he failed to furnish the Tax Clearance Certificate which was mandatorily required. Consequently, no challenge can be made by the unqualified bidder. Accordingly, this Court finds no grounds to exercise its discretionary power under Article 226 of the Constitution of India in the present case. However, the petitioner may approach before the civil forum seeking proper redressal, if any.

50. In light of the above, this writ petition stands dismissed and is disposed of.

JUDGE

Comparing Assistant