



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

Case No. : WP(C)/63/2024

Tako Takio
proprietor of M/s Takio Enterprises L.T. Enterprises, Son of Shri Takio Dolu, Boksu
Village, PO Nyapin, Kurung Kumey District, Arunachal Pradesh

VERSUS

The State of AP and 7 Ors
Age: 0
Occupation :
Address:represented by the Chief Secretary Govt of Arunachal Pradesh Itanagar

2:The Director
Age: 0
Occupation :
Address:Rural Development Department Itanagar Arunachal Pradesh

3:The Joint Director (RE)
Age: 0
Occupation :
Address:Department of Rural Development Govt of AP Itanagar

4:The Block Development Officer
Age: 0
Occupation :
Address:CD Block Parsi Parlo Koloriang Kurung Kumey District Arunachal Pradesh

5:The Project Director (PD) Age: 0 Occupation : Address:District Rural Development
Agency (DRDA) Kurung Kumey District Arunachal Pradesh

6:Tender Evolutoin Board cum Tender Evaluation Authority
Age: 0
Occupation :
Address:represented by its Chairman DRDA Koloriang Kurung Kumey District

Arunachal Pradesh

7:Nodal Officer MGNREGA

Age: 0

Occupation :

Address:DRDA Koloriang Kurung Kumey District Arunachal Pradesh

8:M/s J G Enterprise

Age: 0

Occupation :

Address:

represented by its proprietor Shri Passang Nima Son of Passang Taki Dokum colony
Itanagar PO Itanagar Papumpare District Arunachal Pradesh

Advocate for the Petitioner : Teto Taba, C. Ering, B. Taba

Advocate for the Respondent : GA (AP), Taja Garam (R-8)

BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 04-03-2024

Heard Mr. T. Taba, learned counsel for the petitioner. Also heard Mr. B. Picha, learned Standing counsel, Rural Development Department for the Official respondents and Mr. T. Garam, learned counsel for the respondent no. 8.

2. The challenge in the present proceedings is to a Letter of Intent (LOI), dated 08.01.2024, issued by the respondent no. 2, i.e. the Director, Rural Development Department, Itanagar, Arunachal Pradesh to the respondent no. 8 for procurement of materials under MGNREGA works- 2023-24 for CD-Block, Nyapin, Kurung Kumey District.

3. The facts requisite for adjudication of the issues arising in the present proceedings is noticed, hereinbelow:

The Joint Director, Department of Rural Development, Government of

Arunachal Pradesh had issued a Notice Inviting Tender, dated 31.10.2023 inviting bids from firms fulfilling the eligibility criteria for supply and procurement of materials pertaining to MGNREGA works-2023-24 for CD-Block, Nyapin, Kurung Kumey District. The estimated cost was reflected as Rs. 4,27,05,016.00/- (Rupees Four Crore Twenty Seven Lakh Five Thousand Sixteen). The petitioner as well as the respondent no. 8 having fulfilled the requisite eligibility criterias, submitted their bids along with other four eligible firms in pursuance to the said NIT, dated 31.10.2023. It is projected in the writ petition that the technical bid of the petitioner as well as the respondent no. 8 and other firms having found to have satisfied the eligibility criteria, the financial bids of the bidders participating in the tender process were opened on 11.12.2023 by the Board as constituted by the Project Director-cum-ADPC, DRDA, Kurung Kumey District. The said Board on consideration of bids so received proceeded to recommend the petitioner firm as the L-1 bidder and the respondent no. 8 firm as the L-3 bidder. The said recommendation as made, was thereafter, placed before the Director, Rural Development, wherein, after further scrutiny, the respondent no. 2 i.e. the Director, Rural Development proceeded to issue a Letter of Intent (LOI), dated 08.01.2024, in favour of the respondent no. 8 for the work in question. Being aggrieved, the petitioner has instituted the present proceedings.

4. Mr. Taba, learned counsel for the petitioner submits that in terms of the provisions of the NIT, the tender is to be scrutinised by the District Level Committee as constituted by the jurisdictional PD-cum-ADPC and the said recommendations are thereafter, forwarded for acceptance before the respondent no. 2. The District Level Board having recommended the petitioner firm for award of the work after having determined the bid as submitted by it to

be the lowest, the respondent no. 2 could not have ignored such recommendations and issue the LOI in question, thereby awarding the work to the respondent no. 8.

5. Mr. Taba by relying upon the Minutes of the Board Proceeding Meeting, dated 11.12.2023, has submitted that the Board had considered all relevant factors and it was only thereafter, that the petitioner firm was declared as the lowest bidder (L-1) and the tender conditions requiring the respondent no. 2 to accept such recommendation made, a deviation from the process as prescribed was not called for in the matter.

6. Mr. Taba by referring to the contentions raised by the respondents in the matter submits that the purported subsequent, scrutiny as carried out at the level of the Director, Rural Development, was so carried out to favour the respondent no. 8 and no such power was vested with the respondent no. 2 to further scrutinise the recommendations made by the District Level authorities. Mr. Taba further by referring to the provisions of Clause-8 (xxiii) of the terms and conditions of the tender submits that the bid as submitted by the respondent no. 8 being beyond the permissible variation limit of 10% as prescribed under the conditions of the tender, the bid of the respondent no. 8 was not acceptable and the same should have been rejected at the threshold itself. Mr. Taba basing on the above premises submits that the award of work in favour of the respondent no. 8 is required to be interfered with by this Court and directions issued to the respondent authorities to settle the work in question with the petitioner firm in terms of recommendation made by the District Level Evaluation Board.

7. *Per-contra*, Mr. Picha, learned Standing counsel for the Rural Development Department submits that the tender conditions permit a scrutiny of the

recommendations basing on the tender documents at the level of the Director, Rural Development and such power has been so conferred so as to remove any errors that may creep into the recommendations made by the District Level Committee. It is submitted that on a scrutiny of the recommendation of the District Level Scrutiny Board by the Board as constituted at the level of the Director of Rural Development, it was found that the District Level Board had not appreciated the bid values as quoted by the petitioner firm as well as the respondent no. 8 firm. Mr. Picha submits that the bid values as quoted by the parties and as revealed from the bids submitted by the respective parties, reflected that the respondent no. 8 firm had submitted the lowest rates and accordingly, the correction being made, the LOI came to be issued in favour of the respondent no. 8. Mr. Picha further submits that the bid values as quoted by the respondent no. 8 firm being within the variable range, the LOI was issued to the said firm. Thereafter, the agreement was executed in the matter between the Project Director, DRDA, Kurung Kumey District and the respondent no. 8 firm and the supplies have since been initiated. Accordingly, it is submitted that the decision to award the work to the respondent no. 8 having been so arrived at strictly in terms of the provisions of the NIT, the same does not call for any interference from this Court.

8. Mr. T. Garam, learned counsel appearing for the respondent no. 8 adopts the submissions made by the learned Standing counsel, Rural Development Department.

9. Mr. Garam further submits that after execution of the agreement when the process for supplies were being initiated, the Project Director, DRDA, Kurung Kumey District proceeded to issue a communication dated 02.02.2024 to the respondent no. 8 firm by which it was stated that the agreement/MoU as

entered into with the respondent no. 8 in connection with the work in question was withdrawn for further verification and examination on the ground that complaints were received to the extent that the work was awarded to a firm which was not adjudged as the L-1 firm by the District Level Board. Being aggrieved, the respondent no. 8, herein, as petitioner had approached this Court by way of instituting WP(C)No. 58/2024 assailing the communication dated 02.02.2024. This Court upon consideration of the matter was pleased to set aside and quash the said communication dated 02.02.2024, vide order dated 14.02.2024. Accordingly, Mr. Garam submits that there is no irregularity and/or illegality in the award of the work in favour of the respondent no. 8 and accordingly, the same does not call for any interference from this Court.

10. I have heard the learned counsels for the parties as well as perused the materials brought on record.

11. In view of the submissions advanced by the learned counsels for the parties, the issue arising in the present proceeding for consideration of this Court is as to whether the process adopted and/or decision made by the authority in awarding the work in question to the respondent no. 8 was vitiated vide *malafide* and/or was so done solely to favour the respondent no. 8. It is also to be considered as to whether the process adopted or decision made is so arbitrary and irrational that the said decision could not have been arrived at by any responsible authority acting reasonably and in accordance with the relevant law.

12. Given the issue as arising in the present proceedings, this Court at the outset would like to take note of decision of the Hon'ble Apex Court, passed in the case of ***Jagdish Mandal vs. the State of Orissa and Ors.***, reported in **2007 14 SCC 517**.

“...22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

13. The bids of the petitioner and the respondent no. 8 were opened on 11.12.2023 and from the Minutes of the Meeting of the Board, dated

11.12.2023, constituted by the Project Director, it is seen that the bid of the petitioner firm was found to be the lowest and it was denoted as the L-1 bidder while the bid of the respondent no. 8 was denoted as the L-3 bidder. The amount as quoted by the petitioner and the respondent no. 8 were reflected in the said minutes. The amount as quoted by the petitioner and the respondent no. 8 are extracted, hereinbelow:

Petitioner : Rs. 3,84,174,432.80/-

Respondent no. 8 : Rs. 3,83,94,195.00/-

14. It is seen that the recommendations as made by the District Level Committee was, thereafter, placed before the respondent no. 2, who in turn had placed the same before a Board constituted at his level. The Board as constituted by the respondent no. 2 again verified the tender documents including the bid value as submitted by all the bidders, bidding in pursuance to the NIT in question. On such examination being made, it was found that the amount as quoted by the respondent no. 8 firm was admittedly below that of the petitioner firm. Accordingly, basing on the revelations as made by the Board as constituted by the respondent no. 2, the respondent no. 2 on accepting such recommendation made, proceeded to issue the LOI, dated 08.01.2024 to the respondent no. 8 firm.

15. On a mere perusal of the amounts as quoted by the parties and as reflected both in the Minutes of the District Level Board and the Minutes of the State Level Board, it is apparent that the respondent no. 8 firm had quoted an amount lower than the amount that was quoted by the petitioner firm. In such view of the matter, there was no occasion for the District Level Board to denote the petitioner firm to be the lowest bidder and accordingly, an apparent error

had existed in the recommendation as made by the District Level Board. The said recommendation, basing on the same very material on which it was so made, having been again scrutinised by the Board as constituted by the respondent no. 2 and therein, it having come to light that the respondent no. 8 firm had quoted an amount lower than that so quoted by the petitioner firm, the respondent no. 8 firm was denoted as the L-1 bidder. It is to be noted that in both the Boards, the petitioner firm as well as the respondent no. 8 firm were found to be eligible and qualifying in all respects. Accordingly, the work being one of supply, the respondent authorities having proceeded to award the work in question to the person quoting the lowest amount, no error can be found therein by this Court. This would now bring the Court to consider the submission made by the counsel of the petitioner that the rate as quoted by the respondent no. 8 being below the permissible variation of 10%, such bid of the respondent no. 8 did not merit acceptance and ought to have been rejected at the threshold itself. As quoted hereinabove, the rates of the petitioner as well as the respondent no. 8 are both below the 10% rates as mentioned in Clause-8(xxiii) of the terms and conditions of the tender. However, it is to be noted that the variation as available is not to an extent which would lead to a conclusion that award of work under such circumstances would undermine the quality of work in question. It is to be noted that the difference of the bid amount between the petitioner firm and the respondent no. 8 firm is only Rs. 23,236/- (twenty three thousand thirty six). In this view of the matter, the said amount cannot be held to be in any manner affecting the quality of the work that is to be executed by the respondent no. 8 firm. It is to be noted further that in pursuance to issue of the LOI, the petitioner firm had also entered into an agreement with the Project Director, DRDA, Kurung Kumey District and the

same on being withdrawn was assailed before this Court and this Court had set aside the communication by which the said agreement was so withdrawn.

16. In that view of the matter and also noticing that the respondent no. 8 has already been placed with supply orders, the submissions made by the petitioner firm with regard to the non-acceptability of the rates as quoted by the respondent no. 8, on the ground that the said rate is below the permissible variable rate of 10% does not merit acceptance of this Court.

17. In view of the above conclusions, it has to be held that award of the contract in favour of the respondent no. 8 is not vitiated on account of any *malafide* and such award of the contract is strictly in accordance with the terms and conditions of the NIT and based on a proper appreciation of the bids of the petitioner firm and that of the respondent no. 8. Accordingly, the answers to the twin questions as mentioned in the case of **Jagdish Mandal** (supra) is in the negative. The petitioner has failed to adduce any cogent ground to require this Court to interfere with the award of work to the respondent no. 8 firm. Moreover, the respondent no. 8 having been contented to have proceeded with the contract work, any interference at this stage would be against public interest and will also entail higher financial outlet.

18. In view of the above discussions and in light of the position emanating from the decision mentioned above, this Court does not find any merit in the present writ petition and accordingly, the same stands dismissed.

19. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant