

GAHC040001982024

2024:GAU-AP:854



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

Case No. : WP(C)/70/2024

M/s NK Enterprise and Anr
having its registered office at Senki Park, Itanagar, PO RK Mission, PS Itanagar,
Papumpare District, Arunachal Pradesh represented by Shri Lokam Peter

2: Lokam Peter

Age:

Occupation :

Son of Late Lokam Chagar

permanent resident of Lobupa Village

PO Damin

PS Koloriang

Kurung Kumey District

Arunachal Prades

VERSUS

The State of AP and 5 Ors
represented by the Secretary, Rural Development, Govt of Arunachal Pradesh,
Itanagar

2:The Director

Age: 0

Occupation :

Rural Development

Govt of Arunachal Pradesh

Itanagar

3:The Joint Director

Age: 0

Occupation :

Rural Development

Govt of Arunachal Pradesh

Itanagar

4:The Project Director

Age: 0

Occupation :

District Rural Development Agency (DRDA)

Koloriang

Kurung kumey District

Arunachal Pradesh

5:The Tender Evolution Board -cum- Tender Evaluation Authority

Age: 0

Occupation :

represented by its Chairman

DRDA

Kurung Kumey District

Koloriang

Arunachal Pradesh

6:M/s Pacho Enterprises

Age: 0

Occupation :

represented by its proprietor Shri Bamang Pacho

Son of Bamang Tabang

resident of Langbong Village

PO Parsi Parlo

Kurung Kumey District

Arunachal Pradesh

Advocate for the Petitioner : Mr. Dugmar Kamduk, Adv., assisted by Mr. L. Tadam.

Advocate for the Respondent : Mr. Mr. B. Picha, Id. Adv., R-1 to 5.
Mr. L. Perme, Id. Adv., R-6.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

JDate of hearing : 03.06.2024

Date of Judgment : 18.09.2024

JUDGMENT & ORDER (CAV)

Heard Mr. D. Kamduk, learned counsel assisted by Mr. L. Tadam, learned counsel for the petitioners. Also heard Mr. B. Picha, learned counsel for the respondent Nos. 1 to 5 and Mr. L. Perme, learned counsel for the private respondent No.6.

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, against the Notice Inviting Tender (NIT) No. DRDA/KKD/MGNREGA/NIT-02/2021-22 dated 15.11.2023, issued by the Joint Director (RE), Department of Rural Development, Itanagar, Government of Arunachal Pradesh. The aforesaid tender (NIT) pertains to the supply and procurement of materials for MGNREGA works-2023-24 for the CD-Block of Damin under Kurung Kumey District. This application challenges the legality and validity of the impugned Board proceeding minutes dated 11.12.2023, issued by the Tender Opening Committee, which recommended respondent No. 6 as the Lowest Bidder (L1); the impugned Letter of Acceptance dated 10.01.2024, issued by the Project Director, DRDA, to respondent No. 6; the validity of the agreement dated 11.01.2024, between respondent No. 4 and respondent No. 6; and the supply order dated 11.01.2024 issued by respondent No. 4.

3. The brief facts of the case are as follows:

3.1. The petitioner No. 1 is a proprietorship firm/Govt. contractor with its main office at Senki Park, Itanagar, P.O.-R.K. Mission & P.S.-Itanagar, in the District of Papum Pare. This firm authorized Petitioner No. 2 to participate in the tender process on its behalf. The Joint Director (RE), Rural Development, Itanagar, issued a Notice Inviting Tender (NIT) dated 15.11.2023 for the supply and procurement of materials pertaining to MGNREGA works for 2023-24 for the CD-Block of Damin under Kurung Kumey District. The estimated cost for the work quoted in the NIT was Rs. 2,36,97,051/- (Rupees two crore thirty-six lakhs ninety-seven thousand fifty-one) only.

3.2. The petitioners, having the requisite eligibility and qualifications, participated in the tender process. Both the petitioner (M/s N.K. Enterprises) and respondent No. 6 (M/s Pacho Enterprises) submitted their respective bids. According to the NIT, the date for opening the tender papers, both technical and financial, was initially set for 29.11.2023, but was postponed to 06.12.2023. Subsequently, by a circular dated 05.12.2023 issued by the PD, DRDA, Koloriang, Kurung Kumey District, the date for opening the tender papers was further postponed to 11.12.2023 due to an ongoing flagship scheme in the District by the Hon'ble Minister (Home & RD).

3.3. After the technical bids were completed by the petitioners and other firms, and after the financial bids were evaluated by the Tender Evaluation Committee, the financial bid was opened on 11.12.2023. The Board Proceeding minutes dated 11.12.2023 recommended respondent No. 6 as the Lowest Bidder (L1) and the petitioner Nos. as L2 bidder. Dissatisfied with this recommendation and suspecting delay tactics by the respondent authorities, the petitioners filed an RTI application seeking information about the financial bids and other documents submitted by respondent No. 6. Information was furnished to the

petitioners on 27.12.2023.

3.4. The estimated cost for the tender was Rs. 2,36,97,051/- (Rupees two crore thirty-six lakhs ninety-seven thousand fifty-one) only. According to the technical sanction received through RTI, respondent No. 6 quoted Rs. 2,15,41,816.8/- (Rupees two crore fifteen lakhs forty-one thousand eight hundred sixteen point eight) only, while the petitioners quoted Rs. 2,13,27,346/- (Rupees two crore thirteen lakhs twenty-seven thousand three hundred forty-six) only. Thus, respondent No. 6 quoted an amount higher than the petitioners by Rs. 2,14,470.8/- (Rupees two lakhs fourteen thousand four hundred seventy point eight only). Therefore, the petitioners' bid was lower than that of respondent No. 6.

3.5. As per Serial No. 9 of the technical sanction of the Government, the rate for a Citizen Information Board (CIB) unit is fixed at Rs. 7,626/- (Rupees seven thousand six hundred twenty-six) only, and a total of 24 units are required, making the total amount Rs. 1,83,014/- (Rupees one lakh eighty-three thousand fourteen) only. The petitioners quoted Rs. 6,863/- (Rupees six thousand eight hundred sixty-three) only per unit of CIB, totalling Rs. 1,64,712/- (Rupees one lakh sixty-four thousand seven hundred twelve) only for 24 units. However, respondent No. 6 quoted Rs. 10,000/- (Rupees Ten Thousand) per unit of CIB, but incorrectly listed the total amount as Rs. 24,000/- (Rupees twenty-four thousand) only. The correct total for 24 units should have been Rs. 2,40,000/- (Rupees Two Lakhs Forty Thousand) only. The comparative statement prepared by the respondent authorities clearly lists the rate of respondent No. 6 as Rs. 10,000/- per unit, with a total amount of Rs. 2,40,000/- for 24 units.

3.6. Additionally, the total amount quoted by the respondent No. 6 was Rs. 2,15,41,816.8/- (Rupees two crore fifteen lakhs forty-one thousand eight

hundred sixteen point eight) only, while the petitioners quoted Rs. 2,13,27,346/- (Two Crore thirteen lakhs twenty-seven thousand three hundred forty-six) only. Therefore, the petitioner No.2 is the lowest bidder (L1).

3.7. Upon reviewing the RTI information, the petitioners became aware of the alleged illegal actions and unfair evaluation of the financial bids by the respondent authorities. Consequently, the petitioners filed complaints on 31.01.2024 and 05.02.2024, requesting a re-evaluation of the financial bids. However, these complaints have not been addressed to date. The petitioners could not approach this court earlier due to the delayed supply of documents by the respondent authorities and waiting for a response to their representation. Given that the respondent authorities have not acted on the petitioners' representation, this petition has been filed.

4. Mr. Kamduk, learned counsel for the petitioners has submitted that following the recommendation of respondent No. 6 as lowest bidder (L1), the impugned Letter of Acceptance dated 10.01.2024 was issued by the Project Director, DRDA (respondent No. 4) to respondent No. 6. An agreement was executed between respondent No. 4 and respondent No. 6 on 11.01.2024 concerning the work. He therefore, submits that the supply order issued on 11.01.2024 is illegal and unjust.

5. He further submitted that the respondent No. 6 quoted either excessive or very low rates for certain items compared to the justified rates prescribed by the tendering authority. The rates quoted by respondent No. 6 are not workable and could lead to the project's failure. According to the CPWD Manual, under sub-clause 25 of clause 11 of Chapter 4, tenders with a variation of above 10% are barred. Despite this, the respondent authorities recommended respondent No. 6 as the lowest bidder. Therefore, he submits that the intervention of this court is

necessary to set aside and quash the impugned Board Proceeding Minutes dated 11.12.2023, the Letter of Acceptance dated 10.01.2024, the Agreement dated 11.01.2024, and the supply order dated 11.01.2024.

6. It is further submitted that the arbitrary and illegal actions of the respondent authorities infringe upon the petitioner's fundamental rights under Articles 14, 19, and 21 of the Constitution of India. As per the RTI information, the petitioner No.2 is the lowest bidder (L1) in the tender process, however, the concerned authorities acted arbitrarily and illegally by selecting respondent No. 6 as lowest bidder (L1). Therefore, he prays to direct the respondent authorities to justify and re-evaluate the financial bids.

7. Mr. Kamduk, learned counsel for the petitioners has submitted that earlier, the petitioners had filed Writ Petition being numbered as WP(C) No. 68/2024, but during the pendency of the said petitioner, the supply/work order dated 11.01.2024 was issued to respondent No. 6 and for which the said WP(C) No. 68/2024 has to be withdrawn. Consequently, this writ petition challenges the Board proceeding minutes dated 11.12.2023; Letter of acceptance dated 10.01.2024; the validity of the agreement dated 11.01.2024; and the supply order dated 11.01.2024 issued by the respondent No.4.

8. He further emphasized that the authority could have clarified the matter when it was revealed that respondent No. 6 quoted Rs. 10,000/- (Rupees Ten Thousand) per unit of CIB, but incorrectly listed the total amount as Rs. 24,000/- (Rupees twenty-four thousand) only. The correct total for 24 units should have been Rs. 2,40,000/- (Rupees Two Lakhs Forty Thousand) only. The authority should have addressed this discrepancy, but without considering this aspect, respondent No. 6 was declared the lowest bidder (L1).

9. He also pointed out that the authority failed to recognize discrepancies in respondent No. 6's rates, where some items were quoted at extraordinarily high rates while others were quoted at very low rates, which is not feasible for a supplier. This suggests manipulation in the quotation process, and the comparative statement itself reflects such discrepancies that were not considered by the authority. Therefore, he prays for a stay or suspension of the operation of the impugned Board Proceeding Minutes dated 11.12.2023, the Letter of Acceptance dated 10.01.2024, and the Agreement dated 11.01.2024, until the final disposal of this writ petition. He further requests the Court to direct the respondents not to execute the work until the petition is resolved. The petitioners have no other adequate remedy and believe that granting the relief sought would be just and proper.

10. On the other hand, Mr. Picha, learned counsel for respondent Nos. 1 to 5, has submitted that according to the Board proceeding minutes, respondent No. 6 was found to be the lowest bidder (L1). Consequently, the supply order for procurement of materials related to MGNREGA works for 2023-24 for the CD-block of Damin under Kurum Kumey District was issued in favour of the respondent No. 6. Furthermore, he submits that petitioner Nos. 1 and 2 have no legal right to file the present writ petition. As a sole proprietorship firm, the petitioners cannot file a writ petition in its own name, and based on an unregistered authorization letter, petitioner No. 2 cannot file a writ petition for violation of its fundamental rights.

11. He further submitted that the work is on the verge of completion and thus, the present writ petition has already become infructuous. Additionally, the comparative statement submitted by the petitioners, available on page 29 of the petition, bears no signature and is not part of the documents produced before

the concerned authority. He also submitted that based on the board minutes, the supply order was issued on 06.12.2023, and respondent No. 6 accordingly started supplying the materials pertaining to MGNREGA works. The rates for the materials were submitted as per the bill/challan by respondent No. 6 after obtaining the supply order from the concerned authority. It is further contended that the supply order was issued on 11.01.2024, and the complaint by the present petitioners was only filed on 31.01.2024. Moreover, on 07.02.2024, another letter was issued to respondent No. 6 for further supply of materials for MGNREGA works. A Memorandum of Understanding was executed by both parties on 31.01.2024 after the delivery of the work order to respondent No. 6 by the concerned authority.

12. Mr. Picha, learned counsel for the respondents has submitted that all transparency was maintained during the opening of the financial bid held on 11.12.2023 at the district level. During this process, all bidders were allowed to cross-check and raise objections to others bid. However, no objections were raised at that time. Consequently, following all due procedures as recorded in the board meeting minutes dated 11.12.2023, respondent No. 6 was considered the lowest bidder (L1), while, the petitioner was considered lowest bidder (L2). The minutes of the order were issued on 11.12.2023, and there were no complaints from the petitioners and with considerable delay, the present petition is filed. The delay in processing the tender does not alter the board's decision and the minutes dated 11.12.2023, where respondent No. 6 was identified as the lowest bidder (L1).

13. He further explained that after scrutiny at the district level, the tender documents were sent to the directorate level (Itanagar Headquarters) for

additional review, which took some time. He added that as per Clause 15, the tender process complies with Section 20.2 (1) and 20.2.1 (2) of the CPWD Works Manual 2014. Therefore, the engineering wing at the directorate level (Itanagar Headquarters) has the authority to review any recommendations made by the district-level tender board members. To ensure transparency and avoid complications, the financial bids of M/s Pacho Enterprise/respondent No.6 and M/s N. K. Enterprises/petitioner No.1 were also opened simultaneously. The amount quoted by M/s Pacho Enterprise was Rs. 2,13,26,266.80 (Rupees two crore thirteen lakhs twenty-six thousand two hundred sixty-six and eighty paise), which was 10.00%, and M/s N. K. Enterprises quoted Rs. 2,13,27,346 (Rupees two crore thirteen lakhs twenty-seven thousand three hundred forty-six), also 10.00%. The financial bid was analyzed based on the quoted amounts, not the rates. Therefore, M/s Pacho Enterprise/respondent No.6 was designated as lowest bidder (L1) and M/s N. K. Enterprises/petitioner No.1 as lowest bidder (L2).

14. It is further mentioned that after a detailed evaluation of the bid documents, a comparative statement was declared by the authorities on 05.01.2024, and the order conferring L1 status to the private respondent No. 6 was not challenged by the petitioners. Hence, the petitioner's request cannot be granted, and the writ petition is not maintainable. Following the order dated 05.01.2024, a letter of intent dated 08.01.2024 was issued to the private respondent No.6. Notably, the petitioners had not challenged the letter of intent (LOI) dated 08.01.2024 issued by the competent authority. Since the LOI has not been contested, the petitioner's requests cannot be granted, and thus, the writ petition itself is not maintainable.

15. After the issuance of the LOI dated 08.01.2024, the competent authority issued a letter of acceptance dated 10.01.2024 to the respondent No. 6, requesting a performance guarantee/security deposit of Rs. 6,39,700 (Rupees six lakhs thirty-nine thousand seven hundred). Based on the LOI and acceptance letter, an agreement was executed on 11.01.2024 between the concerned authority and respondent No. 6. Following this agreement, a supply order dated 11.01.2024 was issued to the respondent No.6 for various items. Demands were made on 15.01.2024 and 07.02.2024 for the supply of materials, which were provided by respondent No. 6 on 17.01.2024 and 12.02.2024, accompanied by bills/challans.

16. Mr. Picha, learned counsel for the respondents, further submitted that no fundamental rights of the petitioners have been violated to warrant the invocation of this Court's jurisdiction. If the petitioners were truly aggrieved by the authority's decision, they should have approached before the civil forum. He further emphasized that throughout the tender process, transparency and fairness were maintained. Any objections should have been raised on 11.12.2023 during the opening of the financial bid until the completion of the tender process. However, the petitioner did not object at any stage and only filed a representation after the entire tender process was completed.

17. In support of his submission, Mr. Picha, learned counsel for the respondent Nos. 1 to 5, has relied on the following case laws:-

(i). ***N. G. Projects Limited vs. Vinod Kumar & Others***, reported in ***(2022) 6 SCC 127***;

(ii). ***Tata Motors Limited vs. Brihan Mumbai Electric Supply &***

Transport Undertaking (BEST) and others, reported in ***2023 SCC online SC 671***; and

(iii). ***Chairman, State Bank of India & Anr. vs. M. J. James***, reported in ***(2022) 2 SCC 301***.

18. Relying in the case of ***N. G. Projects*** (supra), Mr. Picha, learned counsel for the respondents has submitted that the Hon'ble Supreme Court has held that "Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. Paragraph-23 of the said judgment read as under:-

"In view of the above judgments of this Court, 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 expertise 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 mala-fide 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."

19. In the case of ***Tata Motors Limited*** (supra), the Hon'ble Supreme Court has expressed the view that "in case of challenge of tender process, the court must exercise its discretionary powers under [Article 226](#) with great caution and should exercise it only in furtherance of public interest and not merely on the

making out of a legal point". He emphasized on paragraphs 52 and 53 of the said judgment which read as under:-

"52. Ordinarily, a 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 unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in [Association of Registration Plates v. Union of India and Others](#), reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in [Air India Ltd. v. Cochin International Airport Ltd.](#), reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under [Article 226](#) with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

20. Mr. Picha, learned counsel for respondent Nos. 1 to 5, has further submitted that the entire record and documents reveal that the petitioners remained silent from the time of the financial bid process until the issuance of the Letter of Intent (LOI) and the Letter of Acceptance. The petitioners only filed a representation before the concerned authority after the supply order had

been issued and at present the work is at the verge of completion. Thus, the petitioner did not raise any objections or make representations before the concerned authority following the selection of respondent No. 6 as the lowest bidder (L1). In this context, Mr. Picha relied on the decision of the Hon'ble Supreme Court passed in the case of ***Chairman, State Bank of India*** (supra), specifically citing paragraph 39 of the said judgment, which reads as follows:

“39. Before proceeding further, it is important to clarify distinction between “acquiescence” and “delay and laches”. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.

21. Accordingly, Mr. Picha, learned counsel for respondent Nos. 1 to 5, has submitted that the tender process was conducted transparently, with all formalities observed by the concerned authority, and the petitioner was present throughout the said tender process. Given the financial bid evaluation, respondent No. 6 was deemed the lowest bidder (L1), and the supply order was issued in his favor pertaining to MGNREGA works, 2023-24. Therefore, the present petition is liable to be dismissed, as there has been no violation of the constitutional rights of the petitioners.

22. Mr. L. Perme, learned counsel for respondent No. 6, has submitted that an earlier writ petition, WP (C) No. 68/2024 (***M/s NK Enterprise and Anr. vs.***

State of A.P. & Ors.), was filed by the petitioners, but was subsequently withdrawn on 19.02.2024 without seeking leave to file a fresh writ petition. As no liberty was granted for a new petition, the petitioners cannot now challenge the supply order issued by the concerned authority. He further submitted that the documents filed by the petitioners are fabricated, and bears no signature of the competent authority. Thus, the instant writ petition is based on a misrepresentation of facts and the suppression of material facts, rendering it liable to be dismissed outright.

23. He further submitted that, according to the records, respondent No. 6 quoted a tender amount of Rs. 2,13,26,266.80 (Rupees two crore thirteen lakhs twenty-six thousand two hundred sixty-six and eighty paise), while, the petitioner quoted Rs. 2,13,27,346 (Rupees two crore thirteen lakhs twenty-seven thousand three hundred forty-six). The amount quoted by respondent No. 6 was lower by Rs. 1,079.20, making him the lowest financial bidder (L1). Consequently, the supply order was issued in his favor.

24. It is further submitted that the purported technical sanction document claimed by the petitioners to have been received via RTI is not part of the official tender records of the respondents. The technical sanction document on which the petitioners base their claim that the respondent's quoted tender amount was Rs. 2,15,41,816.80 appears to have been prepared by the Assistant Project Officer (Technical), Department of Rural Development, DRDA, Koloriang, Kurung Kumey District, without legal authority, presumably to support the petitioners' case. This document lacks the signature of the Joint Director (RE) or any other competent authority at the district level, and as such the same cannot be relied upon.

25. Mr. Perme, learned counsel for the respondent No.6 also submitted that,

based on the acceptance letter dated 10.01.2024, the validity of the agreement dated 11.01.2024, and the supply order dated 11.01.2024, respondent No. 6 has already supplied materials on 15.01.2024. Further supply orders dated 07.02.2024 and 16.03.2024 were issued and materials were subsequently supplied. He further submitted that if the petitioners are aggrieved by the supply orders, they have alternative remedies available through civil forums. No fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution of India have been violated to warrant a remedy under Article 226 of the Constitution. Accordingly, he prayed for dismissal of the instant writ petition.

26. In support of his submission, Mr. Perme, learned counsel for the respondent No.6 relies on the decision of the Hon'ble Supreme Court passed in the case of ***K. D. Sharma vs. Steel Authority of India Ltd. & Others***, reported in ***(2009) Sup AIR (SC) 1309***, emphasizing paragraph 24 of the said judgment, which reads as follows:

“24. The jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.”

27. Mr. Perme, learned counsel for respondent No. 6, has submitted that such a fresh petition is not permissible if no liberty was granted to file fresh while withdrawing the earlier petition. He contends that the writ petition cannot be entertained under this circumstance.

28. In support of this submission, Mr. Perme, learned counsel for the respondent No.6 relies on the decision passed by the Co-ordinate Bench in the

case of ***Sew Nafra Power Corporation Ltd. & Anr. vs. State of Arunachal Pradesh & Ors.***, reported in ***2019 (5) GLT 732***. He emphasizes paragraph 7 of the said judgment, which reads as follows:

“7. Issue which was posed in Sarguja Transport Service (supra) was the effect of the withdrawal of the writ petition filed under Article 226 of the Constitution of India without permission of the High Court to file a fresh petition. The Hon’ble Supreme Court after having framed the question as to whether the petitioner after withdrawing the writ petition filed by him in the High Court under Article 226 of the Constitution of India without permission to institute a fresh petition can file a fresh petition in the High Court under that Article, after consideration of relevant provisions of law as quoted herein above, has held that fresh writ petition is not maintainable in respect of the same subject matter if the earlier writ petition had been withdrawn without permission to file a fresh writ petition.”

29. He further submitted that, as per the supply order issued by the respondents' authority, the respondent No. 6 has already supplied the items. Additionally, on two subsequent occasions, there were further demands for materials, which were also supplied by the private respondent No.6. The work is now at the verge of completion. Therefore, at this stage, the present writ petition cannot be entertained, and thus, he submits that the the petitioners should seek redressal before a civil forum, if necessary.

30. In this context, Mr. Kamduk, learned counsel for the petitioners, has submitted that the judgments relied upon by the respondents are not relevant to this case. He further submitted that a complaint/representation was filed before the Director of the Rural Department, Government of Arunachal Pradesh, Itanagar, on 31.01.2024, but no action was taken on it, prompting the petitioners to file the subsequent writ petition. The documents relied upon by the petitioners were obtained from the Public Relation Office based on an RTI application made by the petitioners. He further submitted that the supply order was not issued due to a stay order passed by the Division Bench.

31. In this regard, Mr. Perme, learned counsel for respondent No. 6, has submitted that the first supply order was issued on 11.01.2024, the second order on 07.02.2024, and the third order on 16.03.2024. Therefore, there was no stay order in place, and the supply orders were duly executed and at present the work is at the verge of completion.

32. From the discussion above, it is evident that the present petition filed under Article 226 of the Constitution of India challenging the legality and validity of the impugned Letter of Acceptance dated 10.01.2024, issued by the Project Director, DRDA, to respondent No. 6. The petition also questions the validity of the agreement dated 11.01.2024 between respondent No. 4 and respondent No. 6, and the supply order dated 11.01.2024 issued by respondent No. 4.

33. The petitioner No.1 is a proprietorship firm and that Petitioner No. 2 was authorized by this firm to participate in the tender process on its behalf. The Joint Director (RE), Department of Rural Development, Itanagar, Government of Arunachal Pradesh, issued a Notice Inviting Tender (NIT) dated 15.11.2023 for the supply and procurement of materials related to MGNREGA works for 2023-24 for the CD-Block of Damin under Kurung Kumey District. The estimated cost for the work quoted in the NIT was Rs. 2,36,97,051/- (Rupees two crore thirty-six lakhs ninety-seven thousand fifty-one only). Both the present petitioners and respondent No. 6 participated in the tender process.

34. Initially, the date for opening the tender papers, both technical and financial, was set for 29.11.2023 but was postponed to 06.12.2023. The bid was opened on 11.12.2023. After the opening of the bids, the board proceedings minutes dated 11.12.2023 recommended respondent No. 6 as the lowest bidder (L1) and Petitioner No. 2 as L2.

35. Subsequently, the petitioner sought information through an RTI application and, upon receiving the RTI information, found that respondent No. 6 had quoted Rs. 2,15,41,816.80 (Rupees two crore fifteen lakhs forty-one thousand eight hundred sixteen point eight only), while the petitioners had quoted Rs. 2,13,27,346/- (Rupees two crore thirteen lakhs twenty-seven thousand three hundred forty-six only). Thus, the RTI information shows that the respondent No. 6 quoted a higher amount than the petitioners yet was declared as the lowest bidder (L1), despite the petitioners' bid being lower.

36. Additionally, the petitioners raised issues regarding the technical sanction of the Government. The rate for a Citizen Information Board (CIB) unit is fixed at Rs. 7,626/- (Rupees seven thousand six hundred twenty-six only), and a total of 24 units are required, making the total amount Rs. 1,83,014/- (Rupees one lakh eighty-three thousand fourteen only). The petitioners quoted Rs. 6,863/- (Rupees six thousand eight hundred sixty-three only) per unit of CIB, totalling Rs. 1,64,712/- (Rupees one lakh sixty-four thousand seven hundred twelve only) for 24 units. However, respondent No. 6 quoted Rs. 10,000/- (Rupees ten thousand) per unit of CIB, but the total amount was incorrectly fixed at Rs. 24,000/- (Rupees twenty-four thousand only). The correct total for 24 units should have been Rs. 2,40,000/- (Rupees two lakhs forty thousand only). The comparative statement prepared by the respondent authorities lists the rate of respondent No. 6 as Rs. 10,000/- per unit, with a total amount of Rs. 2,40,000/- for 24 units.

37. Accordingly, Petitioner No. 2 claims that he is the lowest bidder. However, due to alleged conspiracy by the concerned authority, he was declared as L2, while respondent No. 6 was declared as L1, and the acceptance letter and other formalities were completed with respondent No. 6.

38. Following the issuance of the supply order, the petitioner filed representations on 31.01.2024 and 05.02.2024, requesting a re-evaluation of the financial bids. However, these representations were not considered, leading the petitioners to approach this Court. Delays in filing the petition were attributed due to the non-receipt of certain documents.

39. Respondents Nos. 1 to 5 and 6 argue that the entire tender process was conducted transparently, observing all required formalities. According to their records, respondent No. 6 was considered to be the lowest bidder based on the board proceedings minutes, and the supply order was issued accordingly. They also contended that the work is nearing completion, rendering the instant writ petition as infructuous.

40. The respondents' further claim that the comparative statement provided by the petitioners, which appears on page 29 of the petition, bears no signature of the official of the respondent authorities and not part of the official documents submitted to the concerned authority. They assert that it is a manufactured document without the necessary signatures of the authority concerned.

41. The respondents state that the financial bid of respondent No. 6 was Rs. 2,13,26,266.80 (Rupees two crore thirteen lakhs twenty-six thousand two hundred sixty-six and eighty paise), while the bid by M/s N. K. Enterprises was Rs. 2,13,27,346 (Rupees two crore thirteen lakhs twenty-seven thousand three hundred forty-six). Both bids represented 10.00% of the estimated cost. The financial bids were analyzed based on the quoted amounts rather than rates, and respondent No. 6 was found to be the lowest bidder.

42. During the financial bid opening on 11.12.2023, all bidders were allowed to cross-check and raise objections. No objections were raised by the petitioners,

and the board minutes from 11.12.2023 recorded respondent No. 6 as lowest bidder (L1) and petitioner No. 2 as lowest bidder (L2). The petitioners did not lodge any complaints at that time. After a significant delay, the petitioners filed representations on 31.01.2024 and 05.02.2024, by which time the supply order had already been issued to respondent No. 6.

43. As per the comparative statement and the order conferring lowest bidder (L1) status to the respondent No. 6 were declared on 05.01.2024. Additionally, the Letter of Intent (LOI) was issued on 08.01.2024, and the Letter of Acceptance was issued on 10.01.2024, followed by the agreement, was executed on 11.01.2024. Subsequent supply orders were issued on 15.01.2024 and 07.02.2024, with materials supplied by respondent No. 6 on 17.01.2024 and 12.02.2024, respectively, accompanied by bills and challans.

44. The learned counsel for the petitioners, Mr. Kamduk claim that the petitioner No.1 is the lowest bidder based on RTI information is concerned. The petitioner also argues that respondent No. 6's quoted rates were either excessively high or unworkable. Despite these claims, the concerned authority recommended respondent No. 6 as the lowest bidder.

45. On the other hand Mr. Picha, learned counsel for the respondent Nos. 1 to 5 has submitted that the agreements and orders have been executed observing all the formalities, and both parties agreed to the terms, making judicial intervention in this case unlikely.

46. Mr. Picha, learned counsel for respondent Nos. 1 to 5, relied on the judgment rendered by the Hon'ble Supreme Court in the case of **N. G. Projects** (supra), has held that "Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary

expertise to adjudicate upon such issues". A similar view is also expressed by the Hon'ble Supreme Court in the case of **Tata Motors Limited** (supra).

47. Further, after considering the submissions made by the learned counsels for both sides and on perusal of the materials available on record, it is observed that the supply orders were placed on three occasions, and the items have been delivered by Respondent No. 6 for MGNREGA works-2023-24 for the CD-Block of Damin under Kurung Kumey District. Although the petitioners claim that the supply order was stayed by the Division Bench, based on documents produced by the respondent authority and Respondent No. 6, it is evident that the materials were provided to the department pursuant to the supply orders dated 11.01.2024, 15.01.2024, and 07.02.2024. Additionally, the last order was placed on 16.03.2024, and no stay was in effect. The orders were duly executed by Respondent No. 6, supplying the required materials for the MGNREGA works-2023-24.

48. More so, due to non availability of the signature of the authority concerned, the documents which were obtained through RTI application also cannot be considered as genuine or the authenticity of the documents are also questionable.

49. Another issue raised by Respondent No. 6 is that the petitioners did not seek leave to file a fresh writ petition after withdrawing the earlier one, and the present writ petition was filed without any liberty to file afresh. Consequently, the petition is not maintainable. In this regard, Mr. Perme, learned counsel for respondent No. 6, has relied on the decision passed by the Co-ordinate Bench in the case of **Sew Nafra Power Corporation Ltd. & Anr.** (supra).

50. Considering the discussions made above and the facts and circumstances,

it is noted that the financial bid of 11.12.2023 was opened in the presence of the parties, maintaining transparency throughout the process. Bidders were allowed to cross-check others' bids, but the petitioners did not raise any objections at that time. The representation was only filed on 31.01.2024, after the issuance of two supply orders to Respondent No. 6. According to the comparative statement and other documents, Respondent No. 6 was found to be the lowest bidder and accordingly, as per the Board minutes, MOU, LOI, and the letter for Acceptance were finalized between the parties. Moreover, materials were supplied by respondent No. 6 pursuant to the supply orders issued by the concerned authority. Therefore, at this stage, it is not appropriate to interfere in the tender process or to recommend any changes to the financial bid, which had been duly considered by the authority after all necessary formalities.

51. 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.”

52. However, if there is any dispute regarding the rates quoted by Respondent No. 6, Respondent Nos. 1 to 5 may issue necessary orders or take appropriate action. Additionally, from the submissions made by the learned counsel for the respondents, it is noted that the work is nearing completion, and thus, it is not justified to direct the authority to reconsider the tender process.

53. Considering the facts of this case, this Court does not find any irrationality or perversity in the impugned Board proceeding minutes dated 11.12.2023, issued by the Tender Opening Committee, which recommended Respondent No.

6 as the Lowest Bidder (L1); the impugned Letter of Acceptance dated 10.01.2024, issued by the Project Director, DRDA, to Respondent No. 6; the validity of the agreement dated 11.01.2024 between Respondent No. 4 and Respondent No. 6; and the supply order dated 11.01.2024 issued by Respondent No. 4. Therefore, keeping in view the judgments of the Hon'ble Supreme Court referred above, this Court interference is not at all required in the instant writ petition. Accordingly, this writ petition stands dismissed.

54. In terms of the above, this writ petition is disposed of.

JUDGE

Comparing Assistant