



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

Case No. : WP(C)/100/2024

M/s Haji Enterprises and Anr
Chandra Nagar, Near Power House, PO RK Mission, PS Itanagar, Papumpare
District, Arunachal Pradesh 791111 represented by its proprietor Shri Nyapi Haji

2: Nyapi Haji

Age:

Occupation :

Son of Tanya Haji resident of Chandra Nagar Near Power House PO RK Mission PS
Itanagar Papumpare District Arunachal Pradesh

VERSUS

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

2:The Chief Executive Officer

Age: 0

Occupation :

ARRDA Itanagar Govt of Arunachal Pradesh Itanagar

3:The Chief Engineer

Age: 0

Occupation :

PMGSY Govt of India Arunachal Pradesh Itanagar P

4:The Suprintending Engineer

Age: 0

Occupation :

Rural Works Circle Pasighat Govt of Arunachal Pradesh

5:The Executive Engineer / PIU

Age: 0

Occupation :

Rural Works Division Likabali Lower Siang District Arunachal Pradesh

6:M/s ATW India Pvt Ltd

Age: 0

Occupation :

having its registered office at 6 Prema House Chowkidinghee Dibrugarh 786003

Assam represented by its Director Rohit Kr More

Advocate for the Petitioner : Duge Soki

Advocate for the Respondent : Gimi Tarak, O Pada

**BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 31-05-2024

Heard Mr. D. Soki, learned counsel for the petitioners and Mr. G. Tarak, learned standing counsel for the Rural Works Department, representing respondent nos. 1 to 5 as well as Mr. O. Pada, learned counsel appearing for respondent no. 6.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for quashing of the Bid Evaluation Report of Part-II of the Bid dated 25.01.2024 by the Bid Evaluation Committee of Arunachal Rural Roads Development Agency under Rural Works Department, Itanagar, whereby, the bid of the respondent no.6 with a price bid of Rs.1,49,99,557.22, which was (-)15.19% of the estimated cost of Rs.1,76,87,000/- was declared to be L1 bid has been assailed with consequential prayer to direct the respondents to forebear from giving effect the said financial

evaluation with further prayer for a direction upon the respondent authorities to invite fresh NIT in terms of guidelines dated 07.05.2013.

3. The petitioners are relying on the guidelines for evaluation of bids and awards of contracts under PMGSY Scheme, specifically guideline no.5.8(a) thereof, which defines 'Single Bids/Tenders', *inter alia*, providing that if only one bid/tender is received or consequent to technical evaluation if only one bid/tender is found substantially responsive, such bid/tender shall be termed as single tender for the purpose of PMGSY. Under clause 5.8(b) thereof, there is a prohibition from opening a single bid/ tender and the requirement is that the bids shall be reinvited.

4. It is not in dispute, rather it is admitted by the Rural Works Department in their affidavit in opposition filed on 30.05.2024 that out of 6 (six) bids received, 5 (five) bids were all non-responsive and there was a single bid of the respondent no.6. The petitioners have annexed the Bid Evaluation Report - Part-I as annexure-4 to the writ petition, which discloses the same fact. Therefore, it *ex-facie* appears that the acceptance of bid of the respondent no.6 by the competent authority under the Rural Works Department was illegal and violative of clause 5.8(a) and 5.8(b) of the guidelines for Evaluation of Bids and Award of Contract under PMGSY scheme as contained in the circular under file no. P-17025/33/2011/T-III/NRRDA dated 07.05.2013 issued by the Govt. of India, Ministry of Rural Development.

5. The learned counsel for the petitioners has relied on *West Bengal State Electricity Board Vs Patel Engineering Co. Ltd. & Ors.*, reported in (2001) 2 SCC 451 (paragraph 24) to bring on the point that the respondent authorities

could not have given a go by to the Rules or Conditions of the bid under PMGSY scheme and to bring on the point that if the Rules are flouted, the Rule of law would be a causality and such flouting would impair the Rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts. Under the circumstances narrated in this order, the said observation made by the Supreme Court of India squarely applies to the facts of this case because the tender of the respondent no. 6 was accepted by the respondent no. 5 by floating the Guidelines referred above.

6. Having held that the acceptance of bid of the respondent no.6 was an illegal exercise of power by the concerned respondent authorities, the question required to be dealt by the Court is as to what relief can be granted to the petitioners. In the present case in hand, the Technical Evaluation of Bid was done on 18.01.2024. As per the contains of the Bid Evaluation Report-Part-I (Annexure-4), the respondents had put all concerned to notice that the financial bid would be opened at the Office of the Chief Engineer, RWD, Itanagar on 25.01.2024. Consequent to the same, the Executive Engineer/DPIU, RWD, Likabali, by a letter dated 17.12.2024, issued a letter of acceptance to the respondent no.6. In the affidavit in opposition filed by respondent nos. 1 to 5, it is disclosed that a contract agreement dated 29.02.2024 has been executed between the petitioners and the respondent no.6 and that the work of construction of RCC bridge over Dipa River at Chainage 7530.00m has started. This writ petition was, thereafter, filed on 06.03.2024.

7. We take note of the decision of the Hon'ble Supreme Court of India in

the case of *M/s. N. G. Projects Ltd. Vs. M/s. Vinod Kumar Jain*, reported in (2022) 6 SCC 127, wherein, amongst others, it has been held that the Courts must not interfere where interference would cause unnecessary loss to the public exchequer and it was further held that if the Court finds that there is total arbitrariness or that the tender is granted in a *mala fide* manner, still the Constitutional Courts should refrain from interfering in grant of tender by the State relegate parties to seek damages for wrongful inclusion rather than to injunct the execution of contract.

8. The learned counsel for the petitioners has placed reliance of the case of *Jai Bholenath Construction Vs. the Chief Executive Officer, Zilla Parishad Nanded and Ors.*, order dated 18.05.2022, passed by the Supreme Court of India in *Civil Appeal No. 4140/2022*, arising out of *SLP(C) 7150/2022*, wherein, the same Bench which had authored the decision of the case of *M/s. N.G. project Ltd. (supra)*, had interfered with the tender process and directed the Zilla Parishad to process the matter further from its stage prior to the issuance of corrigendum dated 24.11.2021.

9. We have perused the copy of the said judgment as produced by the learned counsel for the petitioners. From the contents of the said order, it cannot be deciphered as to whether any contract agreement was entered between the executing agency and the successful bidder. It can only be gathered from the said order that the acceptance of the bid of respondent no. 4 therein, was an action challenged in the writ petition filed by the appellant and as the bid of the respondent no. 4 was found to have been accepted when at the time of the opening of the technical bid, the same respondent was

disqualified and therefore, the said order was passed.

10. In the present case in hand, the bid evaluation was purportedly done on 18.01.2024 and therefore, by the time this writ petition was filed on 06.03.2024, the respondent no. 6 and the Rural Works Department had already executed an agreement dated 29.02.2024 and the work of construction of bridge has commenced. It cannot be said that the construction of bridge under PMGSY scheme is not a project which would benefit the public. Under such circumstances, in view of the delay in approaching the Court, the Court is not inclined to interfere with the tendering process.

11. The learned counsel for the petitioners has strenuously submitted by referring to statement made in paragraph nos. 8 and 9 of the writ petition that the petitioners did approach the Executive Engineer concerned and he was informed that the matter would be looked into and thereafter, after proper consideration, fresh tender would be invited and thereafter, the representative of the petitioners approached the said Office on two to three occasions but could not meet the Executive Engineer. In this context, it is pointed out that in the affidavit filed by the State respondent no. 1 to 5, the statement of the petitioners has not been denied and therefore, it amounts to admission. Therefore, in view of the non-denial of the statement made in paragraph-9 of the writ petition, the only conclusion that the Court can draw is to invoke the *doctrine of non-traverse* and deem that the said statement of the petitioners that they had approached the Executive Engineer/PIU, Rural Works Department (respondent no. 5) who gave the petitioners an assurance that after proper consideration, fresh tender would be invited is correct. The Court is of the

considered opinion that ends of justice would be met to relegate the petitioners to approach the Civil Court for framing compensation from the State respondents including the respondent no. 5 for having accepted the bid of the respondent no. 6 by flouting the guidelines contained in Clause-5.8(a) and Cluause-5.8(b) of the Guidelines.

12. Therefore, the writ petition stands allowed to the limited extend of declaring that the action of the State respondents including the respondent nos. 4 and 5 including the Bid Evaluation Committee to accept the 'single bid' of the respondent no. 6, despite there being a bar against acceptance of a Single Bid during Technical Evaluation after 5 (five) out of 6(six) bidders were disqualified, is illegal. However, the petitioners are relegated to approach the Civil Court for claiming compensation.

13. For the illegality committed as indicated above, the Court is inclined to impose as cost of Rs. 20,000/- on the respondent nos. 1 to 5 to be paid to the petitioners with liberty to the Government of Arunachal Pradesh after due enquiry, to realize the said amount from the Officer who is found to have violated the guidelines contained in Clause-5.8(a) and Cluause-5.8(b) of the PMGSY Tender Guidelines, referred above.

14. The Government in the Rural Works Department is expected to issue a reminder to all concerned strictly to adhere to the PMGSY Guidelines, henceforth.

JUDGE

Comparing Assistant