

GAHC040007842021



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

Case No. : WP(C)/272/2021

M/s Asean Agencies

Represented by its Proprietor Mr. Tarik Talom, S/o Shri Tarik Talom, Village Jomo,
P.O/P.S Rumgong, District Siang, Arunachal Pradesh, Pin 791001
Ph 91 9706090000

VERSUS

THE STATE OF AP and 4 Ors.

Represented by the Secretary (PWD) Government of AP, Itanagar 2:The Chief
Engineer

Age: 0

Occupation :

3:The Superintending Engineer

Age: 0

Occupation :

4:the Executive Engineer

Age: 0

Occupation :

5:Talem Taboh

Age: 0

Occupation

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

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

ORDER

23.01.2024

Heard Shri A. Tatak, learned counsel for the petitioner. Also heard Shri I. Riram, learned Senior Government Advocate, AP for the respondent nos. 1 to 4. The private respondent no. 5 has chosen not to appear.

2. The case in hand has a chequered history.

3. The petitioner is a Class I Contractor. In the year 2019, a work relating to the Road Network of Kaying Township was split into two packages, namely, package 1 and package 2 each package being approximately Rs.7 (seven) crores. It was however stipulated that the works were meant for Class II Civil Contractors. As during the prevalent time, the Class II Contractors were eligible for works up to Rs.5(five) crores, there was objection raised by eligible bidders, including the petitioner, who, however also participated. The aforesaid NIT of the year 2019 were however cancelled on 05.08.2019 with a direction for clubbing the said two packages. The clubbing of the packages was unsuccessfully challenged by the petitioner in this Court in WP(C)/268/2019. Thereafter, the petitioner had participated in the NIT which was floated on 25.02.2021. Along with the petitioner, it appears that there are three other bidders, who had participated. The projected case of the petitioner is that though the date of opening of the technical bid was fixed on 12.03.2021, after such opening, there was no further information as to when the financial bids would be opened. Ultimately, on 06.08.2021, all the four bidders including the petitioner was held to be technically non-responsive. The same was followed by a fresh NIT for the work. Assailing the aforesaid action, including the initiation

of a fresh process, the instant writ petition was filed. This Court while issuing notice, had also passed an interim direction that though the process *per se* was not stayed, the final orders of allotment should not be issued.

4. Shri Tatak, learned counsel for the petitioner has submitted that the impugned action is a result of favouritism and nepotism as one of the interested bidders was a firm, the proprietor of which is the spouse of the local MLA. The enlistment of the said firm was however cancelled on 06.05.2021 and therefore, the present action was taken so that the firm gets a further chance to participate in the new bid process. By referring to the affidavit-in-opposition dated 04.01.2022 filed on behalf of the Department, the learned counsel for the petitioner has drawn the attention of this Court to the averments made in paragraph 3 of the said affidavit-in-opposition. He submits that certain reasons have been cited for cancellation of the bid of the petitioner. Amongst those reasons, it has been stated in the affidavit that there is concealment of ongoing projects, there was misrepresentation for which the bid capacity, as required under clause 1.4 of Section 2 would be affected. There was false representation for which clause 4.5.10 was invoked and lastly the PVR submitted was an outdated one. The learned counsel submits that none of the reasons are sustainable in law and has been invented only to deprive the petitioner from a fair consideration. This Court has, however, noticed that it is not only the bid of the petitioner which has been held to be non-responsive, the bids of the other three bidders have also been held to be non-responsive and the reasons thereof are also stated in the said affidavit-in-opposition.

5. At this stage, Shri Riram, learned Additional Senior Government Advocate, AP submits that the cancellation of the tender process initiated vide NIT dated 25.02.2021 has been done *bona fide* and for valid grounds. He submits that

apart from the fact that the administration would have the liberty and discretion to cancel a tender process, such cancellation cannot be matters of judicial review at the instance of an unsuccessful bidder. He submits that not only the reasons have been assigned for holding the bid of the petitioner to be non-responsive, the bids of the other bidders have also been held to be non-responsive by citing cogent reasons.

6. This Court is of the view that apart from the settled law that a cancellation of a tender process may not *per se* be questioned in a petition for judicial review, in the instant case, reasons are also assigned for such cancellation. This Court is also of the view that even assuming for argument sake that the petitioner is able to make out a case that the reasons assigned for holding its bid to be non-responsive are held to be unsustainable, there is no challenge by the other bidders with regard to the action of holding their bids also to be non-responsive. Thus, even under the such assumption if a situation may arise where the bid of the petitioner may emerge as the single technically responsive bid in which case, the CVC guidelines and other procedures would come into application which calls for a cancellation of the process and to re-initiate a new process.

7. Shri Tatak, learned counsel for the petitioner, at this stage, submits that the present NIT dated 25.02.2021 was the second time when the works were advertised. This Court is however unable to accept the said submission inasmuch as, though it appears that the NIT dated 25.02.2021 can be construed to be the second attempt, the cancellation of the first attempt was not on a situation of emergence of one single bid but for other reason which appears to be a *bona fide* and also a part of the challenge which was unsuccessfully made by the petitioner in the first round of litigation.

8. This Court has, however, been informed that the petitioner did not participate in the new NIT dated 25.02.2021 in spite of there being no embargo. Upon such facts and circumstances, this Court is of the opinion that no relief, whatsoever would be entitled to by the petitioner even if it is held that the rejection of the bid of the petitioner is not in accordance with law. Since this Court has not gone into the depth of the challenge with the issue of technical bid of the petitioner, it is made clear that such rejection of the bid of the petitioner as technically non-responsive would not come into the way for assessing the bid of the petitioner in any future NIT, if it intends to participate.

9. The writ petition stands dismissed and the interim order passed on 27.08.2021 is accordingly vacated.

JUDGE

Comparing Assistant