

GAHC040008062024



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

Case No. : WP(C)/255/2024

M/s Manab Jyoti Gogoi and Anr
having its registered office at Red Cross Road, Bye Lane 1, Khalihamari, PO, PS and
District Dibrugarh, Assam represented by its Managing partner Shri Manab Jyoti
Gogoi 2: Manab Jyoti Gogoi

Age:

Occupation :

Son of Late Mohendra Gogoi
resident of Red Cross Road

Gy Lane 1

Khalihamari

PO

PS and District Dibrugarh

Assa

VERSUS

The Union of India and 2 Ors
represented by the Secretary, Govt of India, Ministry of Defence, 101-A, South
Block, New Delhi 2:The Border Road Organisation

Age: 0

Occupation :

represented by Director General

Ministry of Defence

Seema Sadak Bhawan

Ring Road

Naraina

Delhi Cant

New Delhi 110010

3:The Chief Engineer

Age: 0
Occupation :
BRO Cum Accepting Officer
Project BRAHMANK
C/o APO
Pasighat
Arunachal Pradesh Pin 93172

Advocate for the Petitioner : Ravi Shankar Mishra, Kemo Lollen

Advocate for the Respondent : Marto Kato, DSGI

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

ORDER

Date : 20.09.2024

Heard Mr. R. S. Mishra, the learned counsel for the petitioners. Also heard Mr. M. Kato, learned DSGI appearing for the respondent.

2. Filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for direction upon the respondent authorities to finalize the Tender Ref No. CE (P) BMK-09 of 2023-24 dated 25.08.2023, issued by the Border Road Organization for Surfacing Work, Preparation of Subgrade in SMB/SR/HR, GSB 150mm Thick for (Hard Shoulder), GSB 100mm Thick in two layers (in sinking area), CTB 160mm thick, CTSB 200mm thick (in two layers of 100mm), SAMI cracks layer, DBM 50mm thick BC 50mm thick, Prime Coat, Tack Coat and Road Marking with Thermoplastic Paint (2.5mm thick), Migging-Tuting Road from Km 15.198 to Km 25.000 Under 105 RCC Under 761 BRTF of Project Brahmark in Arunachal Pradesh (Job No: 105/386) Tender No. CE (P) BMK/09/2023-24.

3. The case of the petitioners is that they had participated in the tender

referred above and the petitioners along with two other bidders were found technically responsive. Thereafter, the price bid was opened on 21.03.2024 and the petitioner was found to be L1.

4. Accordingly, the respondent authorities, by their letter dated 16.05.2024, informed the petitioner that he was L1 bidder. However, although the petitioner had extended the validity of his financial bid up to 21.07.2024, as per request made by the authorities, the work was not awarded to the petitioner and accordingly this writ petition.

5. Per-contra, the learned DSGI by referring to the affidavit-in-opposition submitted by the respondents has submitted that as per the terms and conditions of the bid, the validity period of the bids submitted by the tenders or the bidders was valid up to a particular date and accordingly, the respondent authorities had requested all the bidders to extend the bid validity.

6. It is submitted that though the petitioners had extended the validity of the bid till 20.07.2024, but there were two other bidders who had qualified in the technical bid, but as the bid validity was not extended by them, who were L2 and L3 respectively, the respondents took a conscious decision that opening of financial bid in respect of two bidders, who had not extended their financial bid, may lead to legal complications and therefore, a decision was taken by the respondent authorities to re-tender the matter. Accordingly, the DSGI has supported the action of the respondent authorities in contemplating to issue a fresh NIT/tender.

7. Therefore, the only reason not to settle the NIT was because the financial bid of L2 and L3 bidders were also opened though they had not extended the validity of their financial bid.

8. In view of the nature of the defence taken by the respondents to justify the non-finalization of the NIT, the Court is of the considered opinion that in the present case in hand, the petitioners had emerged as L1 bidder. The petitioners have not questioned the opening of the financial bid of L2 and L3 bidders. Moreover, there is nothing on record to show that the L2 and L3 bidders were also aggrieved by opening of their financial bid without the validity of the bid being extended.

9. Accordingly, the Court is of the considered opinion that the petitioners have been able to make out a case for issuance of a direction to the respondent authorities to settle the tender dated 25.08.2023.

10. Therefore, the prayers made in this writ petition deserved to be and is accordingly, conditionally allowed.

11. Accordingly, the Court of the considered opinion that there would be no impediment on part of the respondent authorities to finalize the tender in question in accordance with law.

12. It is made clear that time till 30.09.2024 is granted to the petitioners to submit their undertaking for extension of their financial bid upto 31.10.2024 in appropriate manner.

13. However, if the extension of the price bid of the petitioners is not furnished within the time allowed to the petitioner to the competent authorities of the respondent, being the Accepting Officer, Project BRAHMANK (respondent no.4), the respondent authorities would be entitled to proceed with the re-tender on the ground of non-furnishing of the extension of the financial bid as mentioned in this order. If the petitioner default in extending the validity of their price bid as directed, this order shall not be treated as interference of the

original tender dated 23.08.2023.

14. Needless to say that due compliances have to be done in accordance with the procedure prescribed.

JUDGE

Comparing Assistant