



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

Case No. : WP(C)/256/2024

M/s Kashmirilal Constructions Private Limited and Anr
a company having its office at 440 Khari Bazar, Ranikhet, PO Ranikhet, Almora
District, Uttarakhand 263645

2: Shri Jumdak Basar

Age:

Occupation :

S/o-Gojum Basar, aged about 41 years, Power of attorney holder of Shri Vivek
Agarwal, Board of Director of M/S Kashmirilal Constructions Private Limited,
permanent resident of Gori village, Basar, P/o – P/s – Basar, District Leparada,
Arunachal Pradesh – 791101.

VERSUS

The State of AP and 6 Ors

represented by the Secretary, Department of Power, Govt of Arunachal Pradesh,
Itanagar 791111.

2:The Chief Engineer (Power) cum State Nodal Officer (RDSS),

Age: 0

Occupation :

Department of Power, Vidyut Bhawan
Itanagar, Govt of Arunachal Pradesh
Itanagar 791111.

3:The Chief Engineer (Power)

Age: 0

Occupation :

Central Electrical Zone, Department of Power, Vidyut Bhawan
Itanagar, Govt of Arunachal Pradesh, Itanagar 791111.

4:The Superintendent Engineer (Electrical)

Age: 0

Occupation :

Electrical Circle No. VI, Department of Power,
Aalo, District West Siang, Govt of Arunachal Pradesh 791001.

5:The Executive Engineer (Electrical)

Age: 0

Occupation :

Basar Electrical Division, Department of Power,
Leparada District, Arunachal Pradesh.

6:The Chairman

Age: 0

Occupation :

Price Bid Evaluation Board (Financial) for NIE T Dated 21.07.2023 for Development of Distribution infrastructure in West Siang District of Arunachal Pradesh under the Revamped Reforms Based and Results Linked Distribution Sector Scheme bearing Package No. SE/APEC-VI/RDSS/91-BaED/NIT/2023-24, amounting to Rs. 6,54,62,586/- (Rupees Six crore fifty-four lakhs sixty-two thousand five hundred eighty-six).

7:M/S Trans Arunachal Power Systems, PK Commercial House,

Age: 0

Occupation :

Ganga, Itanagar, P/o-P/s-Itanagar, District Papum pare, Arunachal Pradesh – 791111.

Advocate for the Petitioners : Binter Picha

Advocate for the Respondents : Lissing Perme, S/C Power Department; Mr. N. Ratan, AAG

BEFORE
HONBLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

Date : 27.06.2024

Heard Mr. B. Picha, learned counsel for the petitioners. Also heard Mr. L. Perme, learned Standing counsel for the Power Department and Mr. N. Ratan, learned Additional Advocate General for the State respondents.

2. Matter pertains to Notice Inviting e-Tender dated 21.07.2023 issued by the Superintending Engineer (Electrical), Arunachal Pradesh, Electrical Circle-VI, Aalo, Department of Power, relating to implementation of *"Development of Distribution infrastructure in West Siang District of Arunachal Pradesh under the Revamped Reforms-Based and Results-linked, Distribution Sector Scheme"*.

3. The petitioner, along with others, participated in the said process. Being responsive, its financial bids, along with 2 (two) other bidders were opened. As the rates quoted by it in its financial bid have been found abnormally low that can turn or lead to material quality concerns, the respondent authorities vide communication dated 30.01.2024 asked the petitioner to apprise the Power Department about the justification of such rates quoted by it. The petitioner, on 31.01.2024, replied to the respondents in the Power Department, specifying its justification pertaining to the rates quoted by it, in its financial bid. Subsequently, the Board concerned of the respondent Power Department evaluated and examined the justification of quoting abnormally low rates in their financial bids, submitted by the bidders, including the petitioner, the Board, after evaluating and examining of justification of abnormally low rates, submitted by the bidders, Finding their justifications regarding their quoted low rates being not satisfactory, the respondent authorities in the Power Department by its order dated 02.02.2022 rejected the financial bids of the petitioner and another bidder. At the same time the respondents in the Power Department considered and accepted the financial bid of the respondent no. 7 and allotted the work as specified in

the NIeT dated 21.07.2023.

4. Aggrieved by such act of the respondents in the Power Department of the State, the petitioners have filed this writ petition on 26.06.2024.

5. In this petition, the petitioners have raised various issues like the Memorandum No. PWRS/E-134/2023, dated 18.09.2023, issued by the Power Department of the State whereby, certain conditions have been laid out for adoption in the Department of Power with immediate effect for exercising in the courses of tender/bid processes, bid evaluation and award of the contract works of projects and schemes, incorporating 5 (five) different Clauses, like (i) Pre-Bid Site Inspections, (ii) Joint Venture Bidding, (iii) Price Variation Clause, (iv) Justified Bid Prices Ranges Category-wise, relating to 31 (thirty one) Divisions, divided in three Categories, terrain wise and (v) Validity of Justified Bid Price Ranges valid for the bids of the tenders floated and processed for award during the current Financial Year 2023-24 only that includes the tender work involved in the impugned NIeT dated 21.07.2023.

6. Petitioner also raised the issue against the respondents before the Court that the justification rate with regard to the projects involved in the impugned NIeT dated 21.07.2023 was prepared on 16.01.2024, in violation of the provisions of the CPWD manual, which stipulates that the justification statement is required to be prepared for checking the reasonability of rates before opening of financial bid based on the market rates of materials and labour etc., prevailing on the last date of submission of tender by the authorities concerned specified in that Clause of the CPWD manual. Whereas, in the case in hand, such

justification statement has been prepared much prior to the last date of submission of tender.

7. Through RTI, the petitioner has also obtained information that though the work has been allotted to the respondent No. 7, but the work has not been started.

8. The petitioners have also submitted that on 16.01.2024, itself, the Board/Screening Committee of the Power Department of the State already recommended the respondent No. 7 for the work notified in the impugned NIeT dated 21.07.2023 and thereafter, whatever steps shown to have been taken by the respondents in the Power Department are mere eye wash only.

9. Petitioners stated that they on 09.05.2024, submitted representation before (i) the Chairman of the Tender Opening Committee-cum-Superintending Engineer (Electrical), Arunachal Pradesh Electrical Circle-VI, Aalo, West Siang District, (ii) the Chief Engineer, Central Electrical Zone, Department of Power, Arunachal Pradesh, (iii) the Secretary, Power, Government of Arunachal Pradesh and (iv) the Executive Engineer (Electrical), Basar Electrical Division, Department of Power, stating their grievances relating to all the issues involved in this petition and authorities concerned have not yet responded and those are still pending for consideration.

10. Mr. N. Ratan, learned Additional Advocate General, appearing for the State respondents submitted that the memorandum dated 18.09.2023, is not meant for the bidders and also stated that the

justification rates, as been assessed by the authority concerned, did not violate any such provisions of the CPWD manual.

11. It is seen that the petitioners have been informed of rejection of its financial bid on 02.02.2024 itself and has filed this writ petition on 26.04.2024. In the meanwhile, the work with regard to the impugned NIeT dated 21.07.2023 has already been allotted to the respondent no. 7.

12. Considering the entire aspects of the matter, the Court is not inclined to interfere with the decisions of the respondents in the Power Department in allotting the work relating to the impugned NIeT dated 21.07.2023 to the respondent no. 7 involved in this writ petition.

13. At the same time, the Court is also of the view that the petitioner is entitled to know about the queries that they had made through the representation dated 09.05.2024 before the respondent authorities, that are yet to be disposed of.

14. Accordingly, this writ petition is disposed of, directing the respondents in the Power Department of the State of Arunachal Pradesh to dispose of the representation of the petitioners dated 09.05.2024 (Annexure-24 to this writ petition), , with a reasoned order, after giving them an opportunity of hearing, intimating the petitioners about the outcome of the same.

15. Respondents in the Power Department of the State shall dispose of said representation of the petitioners dated 09.05.2024, within a period of 30 (thirty) days from the date of receipt of certified copy of this order that is to be furnished by the petitioners before the respondent No. 2, the Chief

Engineer (Power) -cum- State Nodal Officer (RDSS), Department of Power,
Government of Arunachal Pradesh.

JUDGE

Comparing Assistant