

GAHC040008062024



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

Case No. : WP(C)/267/2024

M/s Manab Jyoti Gogoi and Anr

Age: 0

Occupation :

Address: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: 48

Occupation :

Address:Son of Late Mohendra Gogoi

resident of Red Cross Road

Bye Lane 1

Khalihamari

PO

PS and District Dibrugarh

Assam

VERSUS

The Union of India and 4 Ors

Age: 0

Occupation :

Address:represented by the Secretary

Govt of India

Ministry of Defence

101-A

South Block

New Delhi

2:The Border Road Organization

Age: 0
Occupation :
Address:represented by by Director General (DG)
Ministry of Defence
Seema Sadak Bhawan
Ring Road
Naraina
Delhi Cant
New Delhi 110010

3:The Chief Engineer
BRO
Age: 0
Occupation :
Address:Project BRAHMANK
C/o 99 APO
Pasighat
Arunachal Pradesh
Pin 931722

4:The Accepting Officer
Age: 0
Occupation :
Address:Project BRAHMANK
C/o 99 APO
Pasighat
Arunachal Pradesh
Pin 931722

5:The Superintending Engineer (Civ)
Director (Contract) Headquarters
chief Engineer BRAHMANK
Age: 0
Occupation :
Address:C/o 99 APO
Pasighat
Arunachal Pradesh
Pin 931722

Advocate for : Kemo Lollen
Advocate for : Marto Kato appearing for The Union of India and 4 Ors: Advocate ,

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, appearing for 2,

3,
4,
5, respectively.

**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 respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have assailed the legality of the Re-Tender Notice No. NIT NO. 80294/BMK/08/2023-24/E8, dated 27.06.2024.

3. The case of the petitioners is that a tender was published by the respondent authorities in their web portal on 24.08.2024 Tender Ref No. CE (P) BMK-08 of 2023-24 (2d Call) dated 23.08.2023 issued by the Border Road Organization for Surfacing Work, Preparation of Sub-grade 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 25.000 to Km 35.134 Under 1488 RCC Under 761 BRTF of Project Brahman in Arunachal Pradesh (Job No: 105/384).

4. The petitioner and 2 others were successful in the opening of the technical bid on 20.09.2023. The financial bid was opened on 23.03.2024 and

on opening of the financial bid, the petitioner emerged as L1 tenderer. It is also projected in the meanwhile, that the respondent authorities had requested the petitioners to extend the validity of the bid till 20.07.2024, which was done by the petitioners. However, the said tender was not finalized and accordingly the petitioners had approached this court by filing WP(C) 254(AP)/2024. This Court by interim order passed on 26.06.2024, while issuing notice, restrained the respondent authorities from re-tendering the said tender.

5. However, a re-tender notice dated 27.06.2024 was issued and accordingly, the present writ petition has been filed.

6. Per-contra, the learned DSGI has submitted that there was no attempt by the respondent authorities to overreach the interim order of this Court dated 26.06.2024. It is submitted that the said order was not made available and or downloaded and transmitted to the respondent authorities on the same date i.e. 26.06.2024 and due to lack of such communication, a re-tender was issued on 27.06.2024. It is submitted that after the interim order of this Court was communicated to the respondent authorities, the tender dated 27.06.2024, which is assailed in this writ petition, has not been acted upon.

7. Referring to the affidavit-in-opposition submitted by the respondents, the learned DSGI 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 certain date and accordingly, the respondent authorities had requested all the bidders to extend the bid validity.

8. 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 issuing of the fresh bid.

9. Therefore, the only reason to issue a fresh 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.

10. In view of the nature of the defence taken by the respondents to justify the issuance of a fresh NIT, the Court is able to considered opinion that in the present case in hand, the petitioners had emerged as L1 bidder and 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.

11. Accordingly, the Court is of the considered opinion that the petitioners have been able to make out a case and the re-tender dated 27.06.2024 is not found to be justified.

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

13. Subject to the condition that the petitioner extends the validity of their price bid up to 31.10.2024, the Court is inclined to conditionally interfere with the Re-Tender Notice NIT No. 80294/BMK/08/2023-24/E8 dated 27.06.2024.

14. It is made clear that 10 (ten) days' time is granted to the petitioners to submit their undertaking for extension of their financial bid from the date of this order in appropriate manner.

15. The re-tender notice is conditionally set aside and quashed.

16. However, if the extension of the price bid of the petitioners is not furnished 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 and on non-furnishing of the extension of the financial bid as mentioned in this order, this order shall not be treated as interference of the original tender dated 23.08.2023.

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

JUDGE

Comparing Assistant