

GAHC040008432024



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

Case No. : WP(C)/268/2024

M/s Pacho Enterprises and Anr
Located at Longbang Village Parsi Parlo, PS Koloriang, Kurung Kumey District,
Arunachal Pradesh represented by Bamang Pacho 2: Bamang Pacho
Age:
Occupation :
a proprietor of M/s Pacho Enterprises
Son of Shri Bamang Tabang
Langbong Village
PO and PS Parsi Parlo
Kurung Kumey District
Arunachal Pradesh

VERSUS

The State of AP and 7 Ors
represented by the Chief Secretary, Govt of Arunachal Pradesh, Itanagar 2:The
Director
Age: 0
Occupation :
Rural Development Department
Itanagar
Arunachal Pradesh

3:The Joint Director (RE)
Age: 0
Occupation :
Department of Rural Development
Govt of Arunachal Pradesh
Itanagar

4:The Block Development Officer
Age: 0
Occupation :

CD Block Polosang
Koloriang
Kurung Kuemy
Arunachal Pradesh

5:The Project Direcotr
Age: 0
Occupation :
District Rural Development Agency
Kurung Kumey District
Koloriang
Arunachal Pradesh

6:The Tender Evolution Board cum Tender Evaluation authority
Age: 0
Occupation :
represented by its Chairman
DRDA
Kurung Kumey District
Koloriang
Arunachal Pradesh

7:The Nodal Officer
MGNREGA
Age: 0
Occupation :
District Rural Development Agency
DRDA
Koloriang
Kurung Kumey District
Arunachal Pradesh

8:M/s N K Enterprises
Age: 0
Occupation :
represented by it proprietor Shri Nangram Kali
Nangram Village
PO and PS Koloriang
Kurung Kumey District
Arunachal Prades

Advocate for the Petitioner : Teto Taba, Nimcha Hondique, Anong kabak, Mardo Game, Vijay Duku Raji, Begi Taba, C Ering

Advocate for the Respondent : GA (AP), SC (RD), Binter Picha, Taja Garam

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

ORDER

Date : 26.09.2024

Heard Mr. T. Taba, learned counsel for the petitioners. Also heard Mr. B. Picha, learned standing counsel for the Rural Development Department, Mr. T. Garam, learned counsel for respondent no.8 and Ms. P. Pangu, learned Govt. advocate representing respondent no.1.

2. This Court in the earlier round of litigation vide order dated 24.05.2024 passed in WP(C) 51/2024 had examined the tender process being NIT/IOB, published on 21.08.2023 for supply and procurement of materials pertaining to MGNREGA works, 2023-24 for CD Block, Polosang under Kurung Kumey District under Package No. VIII, which was issued by the Project Director, District Rural Development Agency, Koloriang, Kurung Kumey District and after examining various tender clauses including the issue of justifiable rates, formed an opinion that the act of the Project Director was an act of insubordination in relation to Clause 8(xxiii) of the terms and conditions of the tender. Therefore, as the Director of Rural Development had not disclosed any justifiable rates, the Court was of the opinion that the Tender Evaluation Committee, constituted by the competent authorities had acted illegally and it was held that it was not open to the said authority to substitute its view taken by the Project Director, DRDA, Kurung Kumey District, without any justifiable reasons being disclosed either in the order dated 05.01.2024 or in the note sheet of 05.01.2024 and the e-note sheet no. 1 generated on 06.01.2024. Accordingly, the order No. DRD-13013(15)/1/2024-DRD-RD dated 08.01.2024, issued by the Director, Rural Development Department, in favour of respondent

no. 8 was interfered with. Resultantly, the matter was remanded to the Director, Rural Development Department to undertake the exercise of approval of the recommendation made by the Project Director, DRDA, Kurung Kumey District in respect of tender/NIT dated 21-08-2023, directing that the exercise shall be done within a period of 2(two) weeks from the date of receipt of the certified copy of the order.

3. The grievance of the petitioner is that without compliance of the order dated 24.05.2024 passed by this Court in WP(C) 51/2024, issued a Letter of Intent (LOI) dated 21.06.2024, in respect of the said tender was issued in favour of the respondent no. 8.

4. Accordingly, the learned counsel for the petitioner has submitted that the action of the respondent no.3, i.e. the Director, Rural Development Department in issuing the LOI dated 21.06.2024, was illegal and done in *mala fide* exercise of power. Moreover, it is submitted that it was a case of non-compliance of the order of this Court.

5. The learned standing counsel for the RDD has referred to the affidavit-in-opposition filed on behalf of respondent no.2 to 7 and it is submitted that in earlier writ petition, this Court was not apprised of Standard Operating Procedure (SOP), for procurement of material under MGNREGA by the Rural Development Department, Government of Arunachal Pradesh vide order no. CD-CE(RE)01/2007-08 dated 20.08.2021, which amongst others, provided under clause-6 of the SOP, that "after scrutiny of tender documents, the Project Director shall send the tender documents of technical responsive firms to the Government for further scrutiny and approval/ acceptance."

6. Under clause 8 thereof, "after approval of the Government, the Joint

Director (RE) with due approval from the Director, RD shall issue a letter of intent to the successful bidders. The bidders shall submit acceptance letter to the Joint Director for acceptance.”

7. It is not in the dispute that the Tender Board, in its proceeding dated 25.01.2024, prepared a statement and the respondent no. 8 was held to be no.1 bidder.

8. In the affidavit-in-opposition filed by the respondent nos. 2 to 7, it has been projected that before filing of WP(C) 51/2024, the respondent no.8 had executed part of the work and bill dated 03.02.2024 for a sum of Rs.20,21,800/-, bill dated 03.02.2024 for Rs.22,20,000/-, bill dated 03.02.2024 for Rs.20,21,0800/- and bill dated 03.02.2024 for Rs.20,21,800/- have been raised and that after issuance of the LOI dated 21.06.2024, the respondent no.8 has submitted bill dated 25.06.2024 for Rs.7,92,380/- and bill dated 25.06.2024 for Rs.2,20,480/- after doing work and accordingly, the respondent no.8 had done/ executed work amount to Rs.72,76,460/-.

9. It is also projected that LOI dated 21.06.2024 was issued after the Board decision taken in the proceeding dated 20.06.2024.

10. Accordingly, the Court is constrained to hold that in the present case, the respondent nos. 2 to 7 has been able to demonstrate that the earlier order dated 24.05.2024 passed by this Court in WP(C) 51/2024 was passed without the SOP vide order dated 20.08.2021 on being placed before the Court.

11. The Court is conscious of the fact that it is not examining the mater in review of judgment and order dated 24.05.2024 passed by this Court in WP(C) 51/2024. Nonetheless, we have noted that as per the contention made by the respondent no.2 to 7, prior to the first order in this writ petition being passed

on 01.07.2024, a substantial portion of work has been completed by the respondent no.8, the Court is inclined to hold that notwithstanding that the LOI dated 21.06.2024 was issued without adhering to the directions contained in the order dated 24.05.2024 passed by this Court in WP(C) 51/2024, but the manner of proceedings cannot be held to be not in accordance with the SOP vide order dated 20.08.2021 issued by the Rural development Department, Itanagar. Moreover, as substantial part of the work has been executed by the respondent no.8, the Court is disinclined to interfere with the award of LOI dated 21.06.2024.

12. Accordingly, this writ petition stands dismissed.

13. Parties are left to bear their own cost.

JUDGE

Comparing Assistant