

GAHC040010532024



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(ITANAGAR BENCH)**  
**Case No. : WP(C)/343/2024**

M/s N H Enterprises  
having its office at Village Niause, PO and PS Longding, District Longding,  
Arunachal Pradesh 792131 represented by its proprietor Shri Honwang Wangsuham,  
Son of Shri Lemphu Wangsuham, PO, PS and District Longding, Arunachal Pradesh  
792131

VERSUS

The State of AP and 2 Ors  
represented by the Secretary, Public Works Department, Govt of Arunachal Pradesh,  
Itanagar        2:The Superintendent Engineer

Age: 0

Occupation :

Khonsa Circle

Public Works Department

Govt of Arunachal Pradesh

PO and PS Khonsa.

3:The Executive Engineer

Age: 0

Occupation :

Longding PWD Division

Govt of Arunachal Pradesh

Longding District

PO and PS Khonsa

**Advocate for the Petitioner** : Hage Lampu, D Doley, Joram Sanjay, Khyoda Moses, R B Yadav

**Advocate for the Respondent** : GA (AP),

**-BEFORE-**

**HON'BLE MRS. JUSTICE MITALI THAKURIA**

**05.11.2024**

Heard Mr. H. Lampu, learned counsel for the petitioner and Mr. S.  
Tapin, learned Senior Govt. Advocate for the State respondents.

**2.** By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondent authorities to accept the performance guarantee in terms of letter of acceptance dated 12.06.2024 issued by the Executive Engineer, Longding PWD Division pursuant to the NIT dated 27.02.2024 for construction of OCR Complex at IB Longding under SIB, Dibrugarh issued by the Executive Engineer, Longding Division, Longding, Arunachal Pradesh.

**3.** The case of the petitioner, in brief, is that the petitioner's firm participated in the tender process on the basis of tender issued by the Executive Engineer, Longding Division, Govt. of Arunachal Pradesh vide No.LD/DB-51/nit/2023-24/09 and accordingly, after evaluation of the technical and financial bid, the petitioner's firm was recommended for the award of the work by the Evaluation Board on 12.03.2024 for the work of OCR Complex at IB Longding under SIB, Dibrugarh in pursuance to NIT dated 27.02.2024 for construction of OCR Complex at IB Longding under SIB, Dibrugarh issued by the Executive Engineer, Longding Division, Longding, Arunachal Pradesh.

**4.** Accordingly, a letter of acceptance dated 12.06.2024 was also issued by the Executive Engineer, Longding Division with a request to the petitioner to furnish the performance guaranty/security for the works within 7 (seven) days from the date of issue of the letter of acceptance but the letter of acceptance issued on 12.06.2024 was never received by the petitioner and as such, he could not furnish the performance guaranty/ security in time. The letter of acceptance was received by the petitioner only after lapse of 7 (seven) days i.e on 30.06.2024 along with

the letter dated 24.06.2024 issued by the Executive Engineer, Longding PWD Division to the Superintendent Engineer, Khonsa Circle, PWD seeking necessary instruction as the petitioner's firm did not furnish the performance guaranty/ security and thereafter, the petitioner approached the office of the Executive Engineer, Longding PWD Division on many occasions for furnishing of performance guaranty/security in terms of letter of acceptance dated 12.06.2024 but the office refuse to accept the same. Initially, when the petitioner approached the office of the Executive Engineer, Longding PWD Division, the concern staff refused to accept the same on the ground that the petitioner did not furnish the performance guaranty/security within the stipulated time period.

**5.** Mr. Lampu, learned counsel for the petitioner has further submitted that the floating of tender culminating to a final decision to award a tender to a successful bidder, it needs a considerable time and financial involvement and it is vice-versa applicable to the bidders also and the time and energy to participate in the tender and successful in the competitive bidding. It is also submitted that the petitioner could not furnish his performance guaranty/security only because he received the notice after expiry of 7 (seven) days and even after his approach on several occasions to the office of the respondents, they refused to accept the performance guaranty/security, though, the petitioner was selected as a successful bidder. Accordingly, it is submitted by Mr. Lampu, learned counsel for the petitioner that the present writ petition had to be filed due to non-acceptance of his performance guaranty/ security by the concern Department and accordingly prayed for a direction to the respondent authorities not to cancel the NIT dated 27.02.2024 issued by the Executive

Engineer, Longding PWD Division and also prayed for a direction not to issue fresh tender of work of C/o OCR Complex at IB Longding under SIB, Dibrugarh issued by the Executive Engineer, Longding Division, Longding, Arunachal Pradesh.

**6.** Mr. S. Tapin, learned Senior Govt. Advocate submitted that the petitioner received the letter of acceptance on 14.06.2024 in his residence which has been suppressed by the petitioner and from the record of the service peon, it is also seen that the notice was served in his residence which was duly accepted by his family members but in spite of receipt of the letter of acceptance on 14.06.2024, the petitioner never approached the Department, wherein, he was asked to submit the performance guaranty/security within 7 days from the date of issuance of the letter of acceptance. He further submitted that the petitioner had disputed the fact of receiving the acceptance notice by his family members and it is the case of the petitioner that none of his family member had received the letter of acceptance on his behalf in his residence but, these are disputed fact which are to be decided before a civil forum and it cannot be decided under this forum. Further, it is submitted by Mr. Tapin, learned Senior Govt. Advocate that the tender has already cancelled on 01.07.2024 and cancellation order is also issued to the present petitioner. Therefore, the tender agreement is not in existence as of now, inasmuch as, the same has already been cancelled and the petitioner never challenge the cancellation order and hence, the present writ petition has become infructuous since the petitioner did not challenge the cancellation order.

**7.** In this context Mr. Lampu, learned counsel for the petitioner

submitted that though there is no strict principle of CPC is not required to be followed but the notice should be served in-person and from the affidavit-in-opposition filed by the respondents side, it is very much clear that the notice was not served in-person to the present petitioner and it was received by one Shri Pucat Wangsu who is not a family or relative of the present petitioner. However, it is admitted by the petitioner that the said Pucat Wangsu is a co-villager of the petitioner and it cannot be accepted that letter of acceptance is furnished to a stranger who is not a family member or agent of the present petitioner. Further, it is submitted by the learned counsel for the petitioner that the letter of cancellation was not communicated to the present petitioner and he came to know about the same only after filing of the affidavit-in-opposition by the State respondents on 28.08.2024 when the instruction was placed before this Court by the respondents, as directed.

**8.** Thus, the action of the State respondents right from non communication of letter of acceptance and all subsequent letters to the petitioner comprehends mala fide and hence, the petitioner prays that the respondents may be directed to accept his performance guaranty/security which was in terms of NIT agreement dated 27.02.2024.

**9.** After hearing the submission of the learned counsel for both the parties, it is seen that though the petitioner claimed that he never received the letter of acceptance within 7 (seven) days from the date of issuance but from the affidavit-in-opposition, it is seen that the letter of acceptance was received by one Puchat Wangsu on 14.06.2024 i.e. immediately after 2 days from the date of issuance. However, it is disputed by the petitioner that he never received the notice and the notice

was received by one Puchat Wangsu is his co-villager. But, from perusal of Annexure-2 filed along with affidavit-in-opposition, it is seen that the notice was duly received on 14.06.2024 and it cannot be believed that the notice will be received by any co-villager in the residence of the present petitioner without any authority given by the present petitioner. However, these are the issues not to be decided in this forum and the petitioner may approach the appropriate forum to adjudicate the matter in regards to the service of notice on letter of acceptance. Further, on perusal of Annexure-3, it is seen that the Executive Engineer, Longding PWD Division has already communicated in this regard to the Superintending Engineer, Khonsa Circle, wherein, it is communicated that the present petitioner failed to furnish his performance guaranty/security which is necessary for evaluation of the technical bid and in the same time, the Executive Engineer, Longding PWD Division also approved the proposal of re-tender for the work for construction of OCR Complex at IB Longding under SIB, Dibrugarh issued by the Executive Engineer, Longding Division, Longding, Arunachal Pradesh and accordingly, approved the letter of proposal and from Annexure-5, it is also seen that the order of cancellation has already been passed on 03.07.2024 and it was also communicated to the firm of the present petitioner vide Memo No. LD/CONT-01/2024-25-158a dated 03.07.2024. Thus, it is seen that the tender has already been cancelled due to non-receipt of performance guaranty/security within the stipulated time period of time even after the service of letter of acceptance by the petitioner. Further, it is seen that the petitioner will get every chance to participate in the fresh NIT issued by the Department concerned even if the earlier NIT is cancelled.

**10.** In view of the above facts and circumstances of the case and as the earlier tender has already been cancelled by the Department concerned, this Court is not inclined to pass any order directing the authority concerned to accept the performance guaranty/security of the petitioner, as prayed for in the present writ petition. Accordingly, in the motion stage itself, the writ petition stands dismissed, in terms of the above.

**JUDGE**

**Comparing Assistant**