

GAHC040011932023



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

Case No. : WA/26/2023

M/s Capital Enterprise
Represented by its Proprietor Smti. Senbom Taipodia,
D/o Mahen TaiPodia,
R/o ESS Capital Home Complex, C Sector. Naharlagun, PO/PS Naharlagun,
Papumpare District, Arunachal Pradesh 791110.
M. No. 9957137907

VERSUS

THE STATE OF AP and 4 Ors.
Represented by the Principal Secretary (PWD), Govt. of Arunachal Pradesh, Itanagar.

2:The Chief Engineer (APPWD), (Central Zone B) Pasighat East Siang District
Arunachal Pradesh.

3:The Executive Engineer (PWD), Pasighat Division East Siang District Arunachal
Pradesh.

4:M/s Badri Rai and Com. Represented by its partner Shri Arun Kumar Rai having
its office near Radha Krishna Mandir Station Road Duliajan Dibrugarh Assam
786602

5:the Screening Committee on Opening Tender Bid Age: 0 Occupation : under the
Chairmanship of the Executive Engineer Pasighat Division PWD Arunachal Pradesh.

Advocate for the Petitioner : D Mazumdar, Sr. Advocate

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 08-08-2024

(A. D. Choudhary, J.)

Heard Mr. D. Mazumdar, learned senior counsel assisted by Mr. S. Biswas, learned counsel for the appellant. Also heard Mr. N. Ratan, learned Additional Advocate General representing respondents No.1 to 3 and 5 and Mr. R. B. Phukan, learned counsel for respondent No.4.

2. The present intra-court appeal is directed against a common Judgment and Order dated 25.08.2023, passed in WP(C) No.403 (AP)/2023 and WP(C) No.376 (AP)/2023. By the impugned order, both the writ petitions were dismissed, however, the petitioner in WP(C) 403 (AP)/2023, has only preferred the instant appeal.

3. The writ petition No. 403 (AP)/2023 was preferred challenging a tender process initiated by way of a notice inviting e-tender for the upgradation of Bakin Pertin General Hospital, Pasighat to 300 bedded hospital in East Siang District, Arunachal Pradesh for an estimated cost of Rs.99.03 Crores.

4. The fundamental ground of challenge pleaded in the writ petition as well as urged in the present writ appeal is to the following effects:

(i) Rule 161(I) of the General Financial Rules, 2017 (for short GFR 2017) was violated by not giving any advertisement in the Central Public Procurement Portal.

(ii) Rule 161(III) of GFR, 2017 has also been violated as no advertisement was issued by giving a complete web address, from where the bidding documents can be downloaded, i.e. the NIT in question should have been published in the newspaper giving complete details of the web address.

(iii) Notification dated 19.08.2020 issued by the Government of Arunachal Pradesh, Department of Finance makes it mandatory to give priority for procurement of any goods or services be done locally through normal tender and the only exception is that for the items which are not available locally then only their procurement can be done through Government e-Market (GeM), however, such mandate was not followed. The Notification dated 30.01.2018, issued by the Department of Information and Public Relations (in short DIPR) was not followed.

(iv) When such procedures were not followed and there was no wide publicity and therefore, the appellant could not participate in the tender process and such action violates the appellant's right

under Article 19(1)(g) of the Constitution of India, since, such action is in contravention of the Hon'ble Apex Court's determination made in the case of ***Meerut Development Authority versus Association of Management Studies and Anr.*** reported in ***(2009) 6 SCC 171.***

(v) The learned Single Judge has ignored the aforesaid mandatory prescription and held that over-emphasis has been given by the petitioner for such non-publication, inasmuch as, the petitioner being a prudent businessman and the tender being published in the tender portal of the State, the writ petition cannot be entertained.

5. We have considered the arguments advanced by the learned counsel for the parties.

6. It is an admitted position that the Invitation for Bids (hereinafter referred to as IFB/NIT was published in the website <https://arunchaltenders.gov.in>. The IFB was issued on 22.06.2023. The date of publication in the website was on 24.06.2023 at 10.30 hrs and the period of downloading of bidding documents was given from 24.06.2023 (1200 hrs) to 10.07.2023 (1400 hrs). The commencement of online bid submission was from 27.06.2023 and the last date of submission of online bid was 10.07.2023 at 1400 hrs. The pre-bid meeting was held on 26.06.2023 at 1030 hrs. The

date and time of opening the technical bid was fixed to be on 14.07.2023 at 1130 hrs.

7. Pursuant to the NIT, total 4(four) bidders participated in the bidding process. After technical evaluations, 2(two) out of 4(four) bidders were declared to be technically qualified and were admitted for the financial evaluation of their bids. At that stage, WP(C) No. 349 (AP)/2023 was filed by the All Arunachal Pradesh Registered Contractors Association, challenging the NIT dated 22.06.2023. Such petition was dismissed on 07.08.2023, on the ground of want of *locus standi*. Thereafter, the financial bid was opened on 09.08.2023, as in the meantime, there was an interim order of stay in the writ petition preferred by the Contractors Association. After the opening of the price bid, the writ appellant filed the writ petition on 21.08.2023. It is also not in dispute that the petitioner is also a member of the contractor association.

8. Be that as it may, coming to the merit of the case, Rule 161(I) of GFR, 2017 prescribes for advertisement through the Central Public Procurement Portal and the Central Government owns such Public Procurement Portal. The State has adopted the GFR, 2017 and has also created its own website for e-tendering of all Government tenders i.e. arunachaltenders.gov.in. In the considered opinion of this Court, such procurement portal, so far relating to the State shall

be equivalent to the Central Public Procurement Portal in terms of GFR. The argument of the State that the tender issued by the State of Arunachal Pradesh cannot be uploaded in the said Central Public Procurement Portal could not be established to be incorrect by the writ petitioner.

9. Now, coming to the provision of Rule 161(III) of GFR Rules 2017, which mandates that the complete web address from where the bidding documents can be downloaded to be given, in the considered opinion of this Court, is satisfied, inasmuch as, the web from where the bid documents can be downloaded were disclosed in the official website in the form of a notice and a link was also given for obtaining details of the NIT.

10. From the Rules and the Policies, which are relied on by the appellant, it is seen that there is a shift in policy decision of the State from making advertisements through publication in newspaper to the mode of advertisement in the tender web portal. Therefore, in the considered opinion of this Court and in the given facts of the present case, this Court cannot find fault in the determination of the learned Single Judge, more particularly, a tenderer like the petitioner who claims to be an eligible tenderer having experience to execute a tender of a work of Rs.100 crores, cannot be expected to say that he is not aware of the publication of the tender that too when the

same is published in a dedicated web portal meant only for e-tenders.

11. So far coming to giving preference to the local Tenderers in terms of the Notification dated 19.08.2020, this Court is of the view that such a process does not necessarily mean that such tender should always be published in a newspaper and not on the e-tender web portal, therefore, such argument advanced by the learned senior counsel for the petitioner also do not find our favour. For the same reason, the contention that the Notification dated 30.01.2018, issued by the DIPR is violated, also stands rejected. In the given facts of the present case, when there was publication in e-portal and two bidders participated, the ratio laid in ***Meerut Development Authority (supra)*** in the considered opinion of this Court, should not be made applicable.

12. For the aforesaid reasons, and more particularly in the given facts of the present case, at this belated stage, i.e. after the closing of the Tender process, the opening of the price bid, and the award of the contract, no relief can be granted to the appellant.

Accordingly, the writ appeal stands dismissed.

JUDGE

JUDGE

Comparing Assistant