



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

Case No. : WP(C)/450/2023

M/s Ninur Lomang Enterprise

Represented by its proprietor Shri Natung Tayeng, resident of Bodak Village, PO/PS-Mebo, District- East, Arunachal Pradesh. Mobile No. 8974419640

VERSUS

The State of AP and 5 Others

represented by the Secretary/Commissioner, PHE and WS Department, Government of Arunachal Pradesh, Itanagar.

2:The Chief Engineer

Age: 0

Occupation :

3:The Executive Engineer

Age: 0

Occupation :

4:M/s OB Enterprise

Age: 0

Occupation :

5:M/s ND Enterprise

Age: 0

Occupation :

6:M/s NY Enterprises

Age: 0

Occupation

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri TT Tara, Advocate
Advocates for the respondents : Shri RH Nabam, Addl. AG, AP

Date of hearing : **29.01.2024**
Date of Judgment : **29.01.2024**

JUDGMENT & ORDER

Heard Shri TT Tara, learned counsel for the petitioner. Also heard Shri RH Nabam, learned Addl. Advocate General, Arunachal Pradesh.

2. Though service reports of the private respondents are still awaited, in view of the order proposed to be passed, such service may not be necessary.

3. In pursuance to an NIT dated 27.07.2023 for Package Nos. I, II and III, the petitioner, who has claimed to be eligible in all respects, had participated in the said process. However, the petitioner could come to learn from a communication dated 27.07.2023 that bid of the petitioner was not amongst those found to be technically responsive. The petitioner accordingly sought clarification regarding the action of the authorities in holding the bid of the petitioner to be non-responsive which was replied to vide communication dated 28.08.2023. Allaying the apprehension of the petitioner that the rejection of the technical bid of the petitioner was not because of not submitting the documents in original as required under Clause 11 of the special terms and conditions, it has been stated that the affidavit which was required to be submitted with the bid was not done in its original form but only photocopy of the affidavit was submitted.

4. Shri Tara, learned counsel for the petitioner by referring to the aforesaid Clause 11 has submitted that the original documents were to be submitted only at the time of opening of the tender.

5. Countering the aforesaid argument, the learned Addl. Advocate General has submitted that Clause 11 makes it clear regarding which documents are to be submitted in original at the time of opening of the tender. He submits that 8 documents have been specified and those do not contain the affidavit which is required to be submitted. It is further submitted that the 8 documents, the original of which were to be submitted is with the objective to compare the same with the copies so as to come to a satisfaction of its authenticity. However, the status of an affidavit is different and it is only the original affidavit which is required to be submitted along with the bid.

6. Shri Tara, learned counsel for the petitioner has however submitted that the original affidavit was submitted at the time of opening of the tender.

7. After considering the rival submissions, this Court is of the view that an affidavit is a stand alone document and cannot be compared with the 8 numbers of documents which finds place in Clause 11. This Court is further of the opinion that even if the documents were not specified under such a clause, an affidavit is always required to be submitted in original as there is no concept of a photocopy of an affidavit. The purpose of an affidavit accompany a bid is to give a declaration that the papers / documents submitted with the bid are true to the information of the bidder and such requirement cannot be fulfilled by a photocopy of an affidavit to give a legal sanctity.

8. It is a settled law that in exercise of powers under Article 226 of the Constitution of India, it is the decision making process which can be subject matters of adjudication. In other words, it is the lawfulness and not the

soundness of the decision which can be the subject matter of judicial review. The Hon'ble Supreme Court in the landmark case of ***Tata Cellular Vs. Union of India*** reported in ***(1994) 6 SCC 651*** has laid down as follows:

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application of judicial review is made, but the decision-making process itself.

9. In view of the above, this Court does not find any inherent flaw in the decision making process whereby the bid of the petitioner has been found to be technically non-responsive.

10. Accordingly, this Court is of the opinion that no case for interference is made out and accordingly the same is dismissed.

JUDGE

Comparing Assistant