

GAHC010015722024



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

Case No. : WP(C)/482/2024

M/S TKJ INFRASTRUCTURE PVT LTD
HAVING ITS REGISTERED OFFICE AT 435, 1ST FLOOR, DDA METRO
APARTMENT, JAHANGIRPURI, DELHI 110033, REPRESENTED BY SHRI
VIVEK JHA, DIRECTOR OF PETITIONER COMPANY, AGED ABOUT 41
YEARS, S/O MR. TARAKANT JHA, RESIDENT OF S14, FOURTH FLOOR,
GANESHPURI, SAHIBADAB, SAHIBABAD, GHAZIABAD, U.P 201005

VERSUS

THE NATIONAL HYDRO ELECTRIC POWER CORPORATION PRIVATE
LIMITED AND 5 ORS
REPRESENTED BY ITS CHAIRMAN CUM MANAGING DIRECTOR,
FARIDABAD, HARYANA, 121003

2:THE EXECUTIVE DIRECTOR

SUBANSIRI LOWER H.E PROJECT
GERUKAMUKH
DIST DHEMAJI
ASSAM 787035

3:GENERAL MANAGER (CONTRACT)

SUBANSIRI LOWER H.E PROJECT
GERUKAMUKH
DIST DHEMAJI
ASSAM 787035

4:THE GROUP SENIOR MANAGER (P AND C DIVISION)

NHPC LTD. SUBANSIRI LOWER H.E PROJECT
GERUKAMUKH
DIST DHEMAJI
ASSAM 787035

5:THE TENDER EVALUATION COMMITTEE
REPRESENTED BY GROUP SENIOR MANAGER I.E RESPONDENT NO. 4
SUBANSIRI LOWER H.E PROJECT
GERUKAMUKH
DIST DHEMAJI
ASSAM 787035

6:THE UNION OF INDIA
REPRESENTED BY THE MINISTRY OF POWER
GOVT. OF INDIA
NEW DELHI 0

Advocate for the Petitioner : MR. S K GHOSH

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

02.02.2024

- 1.** Heard Mr. S.K. Ghosh, learned counsel for the petitioner and Mr. P.K. Tiwari, learned Sr. Counsel appearing for the respondent Nos. 1 to 5/caveator.
- 2.** The petitioner's case in brief is that the Respondent No.1 (NHPC) floated a Notice Inviting e-Tender bearing No. NH/SLP/CONT/2023/C-35/NIT/610 dated 13.09.2023, for the work "river bank protection erosion control measures on the right bank of river Subansiri adjacent to Gaghori Kalaknowa RD 48.55 KM to RD 49.45 Km 900 m beyond 30 KM". The Petitioner qualified in the technical bid and was declared as L1 bidder.
- 3.** The Respondent no. 4, vide letter dated 16.12.2023, asked the petitioner to submit an additional performance security deposit of 20% of the quoted amount (in addition to existing 2% Performance Bank Guarantee as per tender condition) as the petitioner's bid was 30.51% below the estimated cost.

Although there is no provision in the NIT for deposit of Performance Security Deposit of 20% of the quoted amount, the petitioner was requested to submit consent to deposit additional PBG, i.e., (20% + 2%) due to his very low bid amount.

4. The petitioner did not accept the condition to submit additional Performance Bank Security of 20% and instead made an offer to submit additional Performance Security of 8%, besides the 2% PBG that was already part of the tender. The Tender Evaluation Committee (Respondent No.5), vide its impugned report dated 22.12.2023, recommended that NIT dated 13.09.2023 be cancelled. The impugned report dated 22.12.2023 was forwarded to the petitioner along with the impugned order dated 04.01.2024 cancelling the tender.

5. The petitioner thereafter submitted an appeal to the respondents. The P&C Division of the NHPC Ltd, vide the impugned e-mail dated 08.01.2024, rejected the appeal of the petitioner.

6. The petitioner's counsel submits that the petitioner is now willing to deposit the additional Performance Guarantee of 20% of the quoted amount besides the existing 2% Performance Guarantee provided in the tender notice.

7. Mr. P.K. Tiwari, learned Sr. Counsel appearing for the respondent Nos. 1 to 5/caveator submits that as the petitioner is willing to deposit the additional Performance Bank Guarantee of 20% of the quoted amount, besides the existing 2% Performance Bank Guarantee provided in the tender notice, the respondents accept the 22% Performance Bank Guarantee to be submitted by the petitioner and they will withdraw the recommendation for cancelling the NIT dated 30.09.2023 and the consequential impugned order dated 04.01.2024 and

e-mail dated 08.01.2024.

8. I have heard the learned counsels for the parties.

9. On perusing the letter No.TKJ/NHPC/2023/QL-RL/01 dated 15.12.2023 issued by the petitioner, it is seen that the petitioner was ready to submit additional Performance Security Deposit, if asked or raised by the NHPC Ltd. The letter No.NH/SLP/CONT/2023-C-35/2023/769 dated 16.12.2023 issued by the Group Sr. Manager (P&C), NHPC Ltd. is to the effect that in order to ensure execution of the work and to show earnestness in doing the contract work, the petitioner was requested to submit their consent for submission of an additional Performance Security Deposit of 20% of the quoted amount, in addition to the existing 2% Performance Bank Guarantee as per tender condition.

10. The letter No.TKJ/NHPC/2023/QL-RL/04 dated 30.12.2023 issued by the petitioner to the Group Senior Manager, (P &C Division), NHPC Ltd. is to the following effect-

“Respected Sir,

In continuation to our previous mail, We are eagerly waiting your response for issuance of LOA (Letter of award) in my favor as soon as possible keeping in view of limited working period at site. My machinery and manpower readily available for movement at work site within a week of award after completing office codal formalities.

I hereby once again repeat my acceptance of additional PBG i.e. (20% +2%) of my quoted amount as requested by SLHEP vide letter no.: NH/SLP/CONT

/2023-C-35/2023/769 Dated 16.12.2023 received through E mail.

Thanking you, hoping a prompt and favorable action.”

11. As the petitioner has now agreed to submit the additional performance

security deposit of 20% of the quoted amount, in addition to the existing 22% Performance Bank Guarantee, as per the existing tender condition, which amounts to 22% Performance Bank Guarantee, which is accepted by the respondent Nos. 1 to 5, the respondents shall accordingly withdraw the recommendation made by the Tender Evaluation Committee (respondent No.5) to cancel the NIT dated 13.09.2023. They shall cancel the impugned order dated 04.01.2024 and the e-mail dated 08.01.2024 and award the work to the petitioner, who is the lowest bidder.

12. The writ petition is accordingly disposed off.

JUDGE

Comparing Assistant