

GAHC010129042024



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

**Case No. : WP(C)/3307/2024**

M/S M V V SATYANARAYANA  
HAVING ITS REGD OFFICE AT 673,  
D. NO 6-1-136/3M, 1ST FLOOR.  
MEHER RATNA COMPLEX, BALARAM COLONY ,  
WALKER TOWN , PADMARAONAGAR, SECUNDRABAD, PIN-500020

VERSUS

THE UNION OF INDIA AND 4 ORS  
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF  
RAILWAYS, 21 RAIL BHAWAN, RAFI MARG, NEW DELHI-01

2:THE GENERAL MANAGER (CONSTRUCTION)  
N.F RAILWAY  
MALIGAON  
GUWAHATI-11  
DIST- KAMRUP (M)  
ASSAM

3:THE CHIEF ADMINISTRATIVE OFFICER -3  
(CONSTRUCTION) N.F RAILWAY  
MALIGAON  
GUWAHATI-11  
DIST- KAMRUP (M)  
ASSAM

4:PFA AND CAO (CONSTRUCTION)  
(CONSTRUCTION) N.F RAILWAY  
MALIGAON  
GUWAHATI-11  
DIST- KAMRUP (M)  
ASSAM

5:THE DEPUTY CHIEF ENGINEER/TENDER  
(CONSTRUCTION) N.F RAILWAY  
MALIGAON  
GUWAHATI-11  
DIST- KAMRUP (M)  
ASSA

**Advocate for the Petitioner** : MRS R DEKA

**Advocate for the Respondent** : SC, NF RLY

**BEFORE**  
**HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**26.06.2024**

1. Heard Mr. B.D. Das, learned Senior Counsel assisted by Mrs. R. Deka, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned CGC appearing for all the respondents.

2. The petitioner's case is that it participated in a public tender bearing Tender No.CE-CON-N-K-MIS-2024-02, floated by the respondent No.5 (N.F. Railway) dated 26.02.2024. The tender was for the following work- "At Kamakhya Yard- Construction of Approach Road from Station building to NH-37 including cover drain, retaining wall, open drain etc., provision of Yard drainage, shifting of existing utilities and other miscellaneous works as well as Linking of BG track with 60kg/52kg single/long welded panels in main line/loop line on PSC sleeper as per instruction of railway. The work including linking of 1 in 12, 1 in 8½ and derailing switches on PSC sleepers (Fan shaped layout), laying of SEJs, in-situ glued joint etc., dismantling of BG track, point & crossings from km. 173/8 (AZA End) to 4/7(GHY End) = 2.70 KM in connection with NBQ-GLPT-KYQ

doubling Project.”

3. The petitioner’s technical bid was however rejected by the respondents on the ground that the bid of the petitioner Joint Venture (JV in short), i.e., “M/s MVVS-PKRJV” did not contain a Power of Attorney in terms of Appendix-II Clause 1.4 and Appendix-III Clause (xxi) of the tender notice. “M/s MVVS-PKRJV” is a Joint Venture created by a Joint Venture Agreement between M/s MVV Satya Narayana, represented by its Managing Director Shri MVV Satya Narayana and Sri Prabir Kanti Roy of M/s Prabir Kanti Roy.

4. The petitioner’s counsel submits that the bid had been submitted by a constituent member of the JV, i.e., Shri MVV Satya Narayana. As such, no Power of Attorney was to be submitted when a bid is submitted by a partner/constituent member of the joint venture.

5. The petitioner’s counsel submits that a harmonious reading of Appendix-II Clause 1.4 and Appendix-III Clause (xxi) of the tender notice does not require the filing of a power of attorney, when one of the partners/constituent members of the JV has submitted the bid of the JV. He further submits that as per the tender notice, documents that are to be submitted with the tender are reflected at Page 276 of the tender form and the Power of Attorney is not amongst the 27 documents to be submitted along with the tender. He accordingly submits that the disqualification of the petitioner’s technical bid at the technical bid evaluation stage should be set aside and the petitioner’s financial bid should be opened.

6. Mr. K. Gogoi, learned CGC has submitted letter dated 25.06.2024 issued by

the Chief Engineer/Con-V, N.F. Railway, Maligaon which is to the effect that once a Joint Venture is formed, the identity of individual members ceases to exist for matters related to the Joint Venture. As such, one member of the Joint Venture cannot act on their own, without the consent of the other members of the Joint Venture. The consent of all members of the Joint Venture is communicated through Power of Attorney agreed upon by all the constituting members. As such, even if the Joint Venture itself is participating in a tender, the Power of Attorney is required in favour of the person signing the bid.

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

8. The issue to be decided is as to whether a reading of Appendix-II Clause 1.4 and Appendix-III Clause (xxi) requires submission of a Power of Attorney when a constituent member of the JV submitted the tender on behalf of the JV.

9. Appendix-II Clause 1.4 and Appendix-III Clause (xxi) of the Tender Notice dated 26.02.2024 is reproduced hereinbelow as follows :

*“Appendix-II (Guidelines & Conditions For Joint Venture Firm)*

*1.4. The tender form shall be purchased and submitted only in the name of the JV and not in the name of any constituent member. The tender form can however be submitted by JV or any of its constituent member or any person authorized by JV through Power of Attorney to submit tender.*

*Clause No. B (xxi) of constituent to Appendix-III (Instructions to the Tenderers) as stipulated at page No. 25 of the tender document, reads as under:*

*Appendix-III (Instructions to the Tenderers)*

*xxi) If the tenderer(s) are JV firm, all the documents like MOU/ JV Agreement, Affidavit, Power of attorney etc. are to be submitted together.”*

10. When we read Appendix-II Clause 1.4, it is very clear that a Power of Attorney need not be submitted along with the tender when the same is submitted by the joint venture or any of its constituent members. It is only when a person authorized by the joint venture submits a tender on behalf of the joint venture that a Power of Attorney is required to be submitted. Appendix-III Clause (xxi), on the other hand, is a generalised condition, which states that if the tenderer(s) are JV, all the documents including the Power of Attorney are to be submitted together. The above shows that there appears to be a dichotomy between Appendix-II Clause 1.4 and Appendix-III Clause (xxi).

11. A perusal of the documents to be submitted with the tender, which is a part of the tender form at Page 276, shows that Power of Attorney is not amongst the list of documents required to be submitted. However, as stated earlier, there is a requirement for submission Power of Attorney in terms of Appendix-II Clause 1.4, when the tender is submitted by any person authorized by the joint venture to submit the tender on its behalf.

12. A Power of Attorney is executed only to show that the Attorney holder acts on behalf of the Executant. It would be a very funny situation if a JV gives a Power of Attorney to itself or if the constituent member gives a Power of Attorney to himself. On a harmonious reading of Appendix-II Clause 1.4 and Appendix-III Clause (xxi) of the tender notice dated 26.02.2024, this Court finds

that it is only when a person authorized by the joint venture submits a tender for the joint venture that there is a necessity for a Power of Attorney to be submitted. Thus, this Court is of the view that when a constituent member of the joint venture submits a tender on behalf of the joint venture, a Power of Attorney is not required to be submitted along with the tender. In view of the above, this Court is of the view that the interpretation of Appendix-II Clause 1.4 by the Chief Engineer in his letter dated 25.06.2024 is not correct.

13. In view of the reasons stated above, the disqualification of the technical bid by the tender committee is not found to be in consonance with the harmonious reading of Appendix-II Clause 1.4 and Appendix-III Clause (xxi). The decision to disqualify the petitioner's technical bid and the actual act is accordingly set aside. The respondents are directed to open the petitioner's financial bid and thereafter consider him for the said contract work, along with all other eligible tenderers.

14. The letter dated 25.06.2024 is made a part of the record and marked as "Annexure X.

15. The writ petition is accordingly allowed.

**JUDGE**

**Comparing Assistant**