

GAHC010175312024



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

Case No. : WP(C)/4388/2024

MD. JIYAU PASA
S/O- LATE SALIM PASA, NALBARI TOWN, WARD NO-8, P.S. AND P.O.
NALBARI, DIST.- NALBARI, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF RURAL
DEVELOPMENT, DEPARTMENT OF RURAL DEVELOPMENT (RURAL
CONNECTIVITY DIVISION), KRISHI BHAWAN, NEW DELHI- 110001

2:THE NATIONAL RURAL INFRASTRUCTURE DEVELOPMENT AGENCY
REPRESENTED BY ITS DIRECTOR GENERAL
KRISHI BHAWAN
NEW DELHI- 110001

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI-06

4:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BORDER ROADS)
CHANDMARI GUWAHATI
ASSAM- 78100

Advocate for the Petitioner : MD S HOQUE, MS B A AHMED,MR. M DEKA

Advocate for the Respondent : DY.S.G.I., SC, PWD ROAD

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

30.08.2024

1. Heard Mr. S. Hoque, learned counsel for the petitioner, who submits that the petitioner is a Class-IA category contractor registered under the Chief Engineer, PWRD, Assam. The grievance of the petitioner is with the NIT dated 03.08.2024, inviting bids in Electronic Tendering System for Upgradation of Roads under the Pradhan Mantri Gram Sadak Yojana, PMGSY-III, Batch-I, for the year 2024-25, for 77 nos. of roads (Length = 552.638 KM) and 14 nos. of Bridges in 8 nos. of Groups and 18 nos. of individual packages in the districts of Barpeta, Cachar, Darrang, Dhemaji, Dhubri, Dibrugarh, Golaghat, Hailakandi, Kamrup Rural, Karbi-Anglong, Karimganj, Kokrajhar, Lakhimpur, Jorhat, Morigaon, N.C. Hills, Nalbari, Nagaon, Sibsagar, & Sonitpur with an estimated cost of Rs. 35025.64 Lakhs (Approx, excluding GST) including Routine Maintenance for five years from eligible contractors registered with Assam Public Works Department (Roads) or contractors registered with other State/Central Government Departments, institutions, Undertaking and Authorities.

2. The petitioner's grievance is that the NIT has incorporated conditions which require that the roads should be constructed by using Full Depth Reclamation (FDR), which has been introduced for the first time in Assam. He submits that as the method of construction of roads by the FDR system is to be used for the first time, the same would cause undue hardship to the petitioner, who does not have the financial capability to use the FDR system.

3. Mr. S. Hoque, learned counsel for the petitioner also submits that the bidder is to have 5 years experience in using the FDR system, which the petitioner does not have. He further submits that the impugned NIT has grouped together different package works pertaining to different districts in one group, i.e. works in various districts have been grouped into one group. He submits that the packages for different districts cannot be grouped together and that the work contract should be allotted package-wise and district-wise. He also submits that the petitioner had sent representations, by way of hardcopies to the respondents, with regard to the petitioner's grievance against the impugned terms of the NIT. However, the same was not considered by the respondents.

4. Mr. B. Gogoi, learned counsel for the PWRD submits that in terms of the NIT dated 03.08.2024, the petitioner and any other person who might have been intending to make a bid, could seek pre-bid clarifications in advance, in terms of Clause 7 of the Detailed Notice Inviting Tender (DNIT), which is reflected in page-27 of the writ petition. Further, the last date of submission of the bids was 29.08.2024. The date of opening of the bids on-line is today, i.e. 30.08.2024, as per page-27. He submits that the petitioner did not seek any pre-bid clarification in advance, as required by sending e-mails before the date for the pre-bid meeting. He accordingly submits that as the petitioner has not approached this Court within time and without taking recourse to the provisions of the NIT, the writ petition should be dismissed, as the time for seeking pre-bid clarifications has passed.

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

6. Clause 7, 10 and 11 of the DNIT dated 03.08.2024 states as follows:

“7. Email ID to seek pre Bid : as-guw2@nic.in

Clarification in advance

Bidders are requested to

By bidders.

send mails

*seeking clarification in advance well before
the date of the Pre Bid meeting*

10. Last date and time for :
submission of bid:

Upto 4:00 PM on 29.08.2024

*Deadline for Receiving
Bids online, including
online payment of bid
security and cost of bid
document from a scheduled
Commercial bank and scanned
copy of Affidavit regarding
correctness of information
furnished with the bid document
as per provision of Clause
4.4 B (a) (ii) of ITB.
The online payment of bid
security and cost of bid
document is to be done
simultaneously on e-tendering
website along with submission of bid.*

11. Date and time for Opening of : *The Bids will be
Part-1 of Bids opened on-line.*

From 11:00 AM

On 30.08.2024.”

7. The petitioner has apparently not sought for any pre-bid clarifications by way of e-mail, as required under Clause-7 and has also not submitted any bid as on date. Instead, the petitioner filed the present writ petition on 27.08.2024 and the file was returned on 28.08.2024 to the petitioner, as there was a defect in the writ petition. The rectified writ petition was filed only on 29.08.2024 and the

same has been listed today, i.e. 30.08.2024. The above facts clearly goes to show that the petitioner has missed the bus in not only seeking pre-bid clarifications during the stipulated time, but in also approaching this Court late. The writ petition is accordingly dismissed as the conditions of the NIT has not been complied with.

8. On considering the above facts, this Court is not inclined to exercise it's discretion in this case.

9. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant