

IN THE GAUHATI HIGH COURT

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

WP (C) 153 (AP) 2017

WP (C) 199 (AP) 2017

WP (C) 200 (AP) 2017

WP (C) 201 (AP) 2017

WP (C) 202 (AP) 2017

**Shri Binya Ronya,
S/o Sri Mabi Ronya,
Vill-Rikpu Ronya,
Dist-West Siang,
Arunachal Pradesh.**

...petitioner.

-Vs-

- 1. The State of Arunachal Pradesh,
Represented by Chief Secretary, Govt. Of Arunachal Pradesh,
Itanagar.**
- 2. The Commissioner-cum-Secretary,
Rural Works Department, Govt. of Arunachal Pradesh, Itanagar.**
- 3. The Chief Engineer, (Eastern Zone),
Rural Works Department, Govt. Of Arunachal Pradesh, Itanagar.**
- 4. The Superintending Engineer,
Rural Works Department, Govt. Of Arunachal Pradesh, Itanagar.**
- 5. The Executive Engineer,
Rural Works Department, Govt. Of Arunachal Pradesh, Itanagar.**
- 6. The Assistant Engineer,
Rural Works Department, Govt. Of Arunachal Pradesh, Itanagar.**
- 7. M/s Er. Bili Potom,
Represented by its proprietor,
Shri Bili Potom,
Vill-Degi Potom, P.O/P.S.-Darak,
West Siang District, A.P.**
- 8. M/s Jumke Store,
Represented by its proprietor,
Shri Jumke Karbak,
Karbak Village, P.O/P.S. Aalo,
West Siang District, A.P.**
- 9. M/s D.G. Enterprise,
Represented by its Proprietor,
Shri Damli Niri,
Vill-Kamba, P.O./P.S. Kamba,
West Siang District, A.P.**
- 10. M/s Yiyom Yomcha Enterprises,
Represented by its proprietor,
Shri Yiyom Yomcha,
Vill-Tapiyor Yomcha,
P.O./P.S. Yomcha, West Siang District,
A.P.**

.....Respondents.

For the petitioner

:

Mr. H. K. Jamoh, Advocate.

For the respondents : Mr. D. Soki, learned Addl. Senior Govt. Advocate for State respondent Nos. 1 to 6.
Mr. K. Jini, learned counsel for private respondent Nos. 7 to 10.

Date of hearing : **07.06.2017.**
Date of Judgment and Order : **09.06.2017.**

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

JUDGMENT & ORDER (CAV)

(Ajit Borthakur, J.)

By this common judgment and order, I propose to dispose of the above 5 (five) writ petitions filed by the petitioner under Article 226 of the Constitution of India being related to the Notice Inviting Tender (NIT) No. EEA/RWD/(SIDF)/ NIT-22/2015-16, dated 07.03.2017, consisting of 4 (four) packages, issued by the respondent No. 5-the Executive Engineer, Rural Works Department (RWD), Aalo Sub-Division, West Siang District, Arunachal Pradesh.

2]. The grievance of the petitioner, who is a class-IV (B & R) registered contractor under civil category and a permanent resident of Rikpu Ronya Village of West Siang District, Arunachal Pradesh, may be summarised thus.

(i) WP (C) No. 153 (AP) 2017

The petitioner has challenged the above NIT, dated 07.03.2017, consisting of 4 (four) packages viz. (1) Maintenance of School building at Darak, Liromoba and Yomcha under 27th Liromoba Constituency for Rs.48 lakhs, (2) Construction of the New road from Karbak PMGSY road to NEC Horticulture garden for Rs.76.80 lakhs, (3) Construction of the Approach road and protection wall at general ground at Yomcha for Rs.28.80 lakhs and (4) Construction of the Welcome gate at Darak for Rs.19.20 lakhs.

(ii) WP (C) 199 (AP) 2017

The petitioner has challenged the package, namely, Construction of the New Road from Karbak PMGSY Road to NEC Horticulture Garden for Rs.76.80 lakhs.

(iii) WP (C) 200(AP) 2017

The petitioner has challenged the package, namely, maintenance of School building at Darak, Liromoba and Yomcha under 27th Liromoba Constituency for Rs.48 lakhs.

(iv) WP (C) 201(AP) 2017

The petitioner has challenged the package, namely, Construction of the Approach road and Protection wall at General Ground at Yomcha for Rs.28.80 lakhs.

(v) WP (C) 202(AP) 2017

The petitioner has challenged the package, namely, Construction of the Welcome Gate at Darak for Rs.19.20 lakhs.

COMMON GROUNDS OF CHALLENGE:

3]. In the above 5 (five) writ petitions, the petitioner has challenged the NIT on the following common grounds:-

(a) *That, the NIT was not given wide publicity, as per requirement of section 17. 1 (1) of the CPWD Works Manual, 2014 followed by all works Department under the Government of Arunachal Pradesh and the provisions contained in the Arunachal Pradesh District Based Entrepreneur and Professionals (Incentive, Development and Promotion) Act, 2015 (for short, 'the Act') and the Arunachal Pradesh District Based Entrepreneur and Professionals (Incentive, Development and Promotion) Rules, 2015 (for short, 'the Rules') so as to reach the notice to all the eligible contractors of 27 Liromoba Assembly Constituency;*

(b) *That, all the above mentioned 4 (four) packages offered by the said NIT, only the above four private respondents have alternately participated in the bids and all of them were accommodated accordingly by the State respondents;*

(c) *That, the petitioner along with other eligible contractors of 27th Liromoba Assembly Constituency was kept in dark about the NIT till the last date of submission of the bids.*

4]. The State respondent Nos. 1 to 6 in their affidavit-in-opposition and Mr. D. Soki, learned Senior Govt. Advocate appearing on their behalf submitted, *inter-alia*, that the Department of information and Public Relation, Arunachal Pradesh duly published the NIT in a daily newspaper of the State having wide circulation in the State as there are no other local dailies in the District and after such wide circulation as per requirement of Section 17.1 (1) of the CPWD Manual, a number of bidders submitted their bids except the petitioner and few others, who were not diligent enough. It has been further averred that though the tender could not be opened due to strike on 20.03.2017, the same was opened on 23.03.2017 and thereafter, on 23.04.2017, the technical bids were also opened and further, the financial bids were opened on 24.03.2017. Accordingly, the letters of acceptance were issued to the successful bidders on 24.03.2017, and pursuant thereto, the bidders have submitted their performance guarantee and thus, all codal formalities were followed, while issuing the NIT and also evaluation of the bids.

5]. The private respondent Nos. 7 to 10 in their affidavit-in-opposition and Mr. K. Jini, learned counsel appearing on their behalf have contended that they are registered firm, located within Liromoba Assembly Constituency, West Siang District of Arunachal Pradesh and in response to the NIT which was widely published through one daily newspaper, participated in the tender process with all other bidders and after successful bids at all stages submitted performance guarantees in favour of the respondent No.-5- the Executive Engineer, RWD, Aalo, Sub-Division on 28.03.2017.

6] In the daily newspaper 'The Dawnlit Post' in its issue, the NIT was published in the form of a press Notice, dated 08.03.2017, by the respondent No. 5, dated 07.03.2017, in respect of the above 4 (four) packages and it shows that each tender cost was less than 1 Crore and therefore, as per the Rules, all the registered contractors in Class V and IV, categories domiciled

within the territorial jurisdiction of the community block are eligible to participate in the aforesaid tendering process. The present petitioner is undisputedly a class-IV (B & R) registered contractor under civil category and as such, he was eligible to participate in the aforesaid contract work bidding.

7]. The CPWD Manual, 2014 and the provisions contained in the Act and the Rules, referred to above, are followed by all works Department in Arunachal Pradesh. Section 17 of the Manual guides the mode of publicity of tenders thus:-

"SECTION 17

PUBLICITY OF TENDERS

17.1 Wide Publicity

(1) Wide publicity should be given to the Notice Inviting Tenders (Form CPWD 6). Tenders must be invited in the most open and public manner possible, by advertisement in the website/press, and by notice in English/ Hindi and the written language of the District. A copy of the notice should be sent to the Central PWD Divisions, Zonal Office, Circle Office, operating at the station of the work and head quarters of the Divisional Office. The notice may also be sent to the Local Municipality, Collector's office, and the State PWD Divisions for works in places where there are not enough CPWD registered contractors.

(2) Notice for all the works, irrespective of their value, shall be published on the website www.tenderwizard.com/cpwd. Once published on www.tenderwizard.com/cpwd, the tender notices will also become available on www.eprocure.gov.in through system link. Proof thereof on both the portals in the form of a printout of NIT details and the Tender creation date and time shall be kept on record. The same shall be enclosed with tender while forwarding to higher authorities for acceptance.

(3) In respect of the works estimated to cost more than Rs.5 lakhs, a brief advertisement inviting tenders should invariably be inserted in the press in the classified category.

(4) Advertisement for Notice Inviting Tenders should be sent to the Directorate of Advertising and Visual Publicity, Ministry of Information and Broadcasting for insertion in the press. Sometimes, tenders value have to be invited for different works by the same Division at the same time, or at short intervals of one or two days. In such cases, it is not desirable to send separate press advertisements for each work, and as far as possible composite advertisements in the prescribed format should be sent to avoid unnecessary expenditure on advertisement.

(5) In urgent cases, the authority competent to approve the NIT may, for recorded reasons, decide to send the advertisement of tenders directly to press. In such cases the newspaper bills shall also be settled by the CPWD.

(6) Draft specimen of Press Notice to be issued as a combined Advertisement in News paper is given as Appendix 19A, Specimen Press Notice forming part of NIT and to be posted on website is given in Appendix B".

8]. In terms of the requirement of the above Section-17 of the Manual, the respondent No. 5 published the NIT in Itanagar based local daily 'the Dawnlit Post' in its issue, dated 08.03.2017. The State-respondents No. 1 to 6 took the stand in their affidavit-in-opposition that the said NIT was published in the said newspaper only having wide circulation in the State by the Director, IPR, on the request of the respondent No. 5 and that as there are no local dailies in the District, all NITs are published in the local dailies based at Itanagar only and further, that after such wide circulation, several bidders submitted their bids. Mr. D. Soki, learned Additional Senior Govt. Advocate has submitted that the provision of 17.1 of the Manual for publicity of NIT at the local municipality, Collector's office, and the State PWD Divisions for

works in places, where there are no enough CPWD registered contractors, is not mandatory and that inspite of being so, NIT was attached in the Notice Board of the Division Office and further, that in compliance of Section 17.5 of the Manual, 7 days time was given for sale and submission of bids. Mr. Soki, learned Additional Senior Govt. Advocate has further submitted that after due compliance of all the codal formalities and acceptance of bids, Letter of Acceptance (LOA) have already been issued to the private respondents in respect of all the packages and also accepted the performance guarantee amount from the private respondents on 28.03.2017. Thus, Mr. Soki, has submitted that the entire tendering process and award of contracts to the private respondents have been completed except signing on the agreement as this Court issued an interim order not to finalize the tender process.

9]. *In K. K. Chire (M/s)-vs- State of Nagaland & Ors, reported in 2016 (5) GLT 332,* a single bench of this Court set aside and quashed the contract work order granted in favour of the private respondent for not maintaining transparency in procedure in the matter of consideration of tender and allotment of work order and for want of wide publicity of NIT.

10]. It is well settled that the tendering authority must abide by the relevant rules and undoubtedly such authority has a right to choose the best bidder out of equally qualified bidders, who is found to be more viable for the work, depending on various factors. However, while doing so, the tendering authority must give wide publicity of NIT in public interest so that maximum eligible bidders can participate in bidding. Section 17.1 of the CPWD Manual is undoubtedly salutary in nature as due follow of the mode of publicity of NIT prescribed therein is warranted to maintain transparency in the matter of consideration of tender and allotment of work order. In the above writ petitions, it is apparent that all the 4 (four) private respondents are the successful bidders in respect of the said NIT despite having more equally qualified and eligible bidders in terms of the conditions of NIT, but deprived of participation in the bidding process for want of knowledge within the

stipulated time, although, wide publicity of the NIT in compliance of Section 17.1 of the CPWD Manual was made through a best circulating news paper of Arunachal Pradesh, viz. 'the Dawnlit Post' in its issue, dated 08.03.2017 and affixing NIT to the Notice Board of the PWD Division Office.

11]. In the above backdrop of the facts, more particularly, as publicity of the NIT was done in substantial compliance of Section 17.1 (1) of the CPWD Manual, 2014, this Court is constrained to hold the view that in the interest of public justice, the concluded tender process cannot now be quashed and set aside and direct for a fresh tender process, as prayed.

Accordingly, these writ petitions stand dismissed. No cost.

Interim order, dated 24.03.2017, stands automatically vacated.

JUDGE

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