

**IN THE GAUHATI HIGH COURT**  
**(The High Court of Assam: Nagaland: Mizoram and Arunachal Pradesh)**

**ITANAGAR PERMANENT BENCH**

**WP(C) No. 502(AP)2018**

M/s Tamchi Kujuk Represented by its proprietor Tamchi Kujuk, Having its registered at Bank Tinali, Itanagar, Papumpare District, Arunachal Pradesh.

.....***Petitioner***

-Versus-

1. The State of Arunachal Pradesh, Represented by Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Secretary, (Rural Works Department), Government of Arunachal Pradesh, Itanagar.
3. The Chief Executive Officer, ARDDA, Itanagar, Government of Arunachal Pradesh, Itanagar.
4. The Superintending Engineer, Rural Work Circle, Itanagar, Government of Arunachal Pradesh, Itanagar.
5. The Executive Engineer/PIU, Rural Works Division, Jamin (Camp Palin), Lower Subansiri district, Arunachal Pradesh.
6. The Tender Scrutiny Board headed by its Chairman, the Superintending Engineer, Rural Works Circle, Itanagar.
7. M/s Biman Bijon Phukan represented by its proprietor Shri Biman Bijon Phukan, Hindugaon, City/Town-North Lakhimpur, P.O/P.S- North Lakhimpur District Lakhimur, Assam.
8. M/s Gabharu Infracon Pvt. Ltd, C/o The Superintending Engineer, Rural Works Circle, Government of Arunachal Pradesh.
9. M/s Puna Hinda, C/o The Superintending Engineer, Rural Works Department, Itanagar Rural Works Circle, Government of Arunachal Pradesh.

.....***Respondents***

For the Petitioner : Mr. D. Panging,  
Mr. V. Jamoh  
Ms. D. Tamuk  
Mr. M. Doji  
Ms. M. Gibi  
Mr. G. Basar  
Mr. O. Tayeng  
Mr. Marge D.

For the respondents : Mr. K. Ete, learned Sr. Addl. Advocate General  
Mr. G. Tarak, learned Standing counsel (RWD)

**BEFORE**  
**THE HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Date of hearing & : **11.10.2018**  
Date of judgement : **11.10.2018**

**JUDGEMENT & ORDER (ORAL)**

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. K. Ete, learned Sr. Addl. Advocate General appearing on behalf of respondent No. 1 and Mr. G. Tarak, learned Standing counsel Rural Works Department, Arunachal Pradesh for the respondents No. 2 to 6.

**2.** By this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the impugned minutes of the technical evaluation for the work of "Road from L030 road of Lower Subansiri District to Tali Block HQ. (Stage-1) Package No. AR/14/08/058" to the extent it declared the bid of the petitioner as 'non-responsive'.

**3.** The petitioner's case, precisely, is that pursuant to the NIT, dated 26.07.2018, issued by the respondent No. 5, the Executive Engineer/PIU, Rural Works Division, Jamin, Lower Subansiri District for the work of "Road from L030 road of Lower Subansiri District to Tali Block HQ. (Stage-1), Package No. AR/14/08/058", under Pradhan Mantri Gram Sadak Yojana (PMGSY), the petitioner-firm submitted bid by enclosing all the relevant documents as per the Instructions to Bidders (ITB). However, the Technical Evaluation Committee(TEC) declared the bid of the petitioner as technically 'non-responsive' on the ground of purported violation of clause 4.4A of the ITB, despite submission of all the required documents. In the pretext of the aforesaid ground, making the petitioner as 'non-responsive', the bids of the private respondents No. 7, 8 and 9 were declared as 'technically responsive' and accordingly recommended for financial evaluation, which is scheduled to be opened today i.e. 11.10.2018. Clause 4.4A of the ITB provides that to qualify for award of the contract, each bidder should have in the last 5 (five) years achieved in any 1 (one) year, a minimum Financial Turnover as certified by the Chartered Accountant, atleast 50% of which is from Civil Engineering construction works equivalent to the amount given therein in the sub-clauses.

**4.** Mr. D. Panging, learned counsel appearing for the petitioner submits that being aggrieved by the recommendation of the TEC, the petitioner submitted 3 (three) representations to the respondent No. 3/ the Chief Executive Officer, ARRDA, Itanagar, Arunachal Pradesh on 05.10.2018, respondent No. 4/ the Superintending Engineer, RWD circle, Itanagar, Arunachal Pradesh on 05.10.2018 and 08.10.2018 respectively, against declaring the petitioner as 'non-responsive' on the ground of non-submission of the Turnover Certificate being not signed by a Chartered Accountant overlooked the fact of non-submission of the required documents by the firms which were declared responsive, although, the balance sheet of the petitioner's firm for the last 5 (five) years was uploaded online on time along with the bid. The minutes of the TEC was made public on 03.10.2018. Mr. Panging emphatically submits that the respondents have deliberately and arbitrarily rejected the technical bid of the petitioner firm despite having fulfilled the required norms of the ITB.

**5.** Mr. K. Ete, learned Sr. Addl. Advocate General, Arunachal Pradesh contends that there is no dispute that the petitioner's bid was found to be 'non-responsive' for having found not furnished the Chartered Accountant certified copy of annual turnover of last five years as required under Section 2, Clause 4.4A of the ITB. Placing the relevant file of the work in question, Mr. Ete contends that the annual Turnover Certificate submitted by the petitioner-firm was not in conformity to Clause 4.4A of the ITB being not certified by a Chartered Accountant and not in proper format. Mr. Ete has made a comparative evaluation of the Turnover Certificates submitted by the respondents No. 7 and 8 with that of the petitioner- firm and contends that the petitioner-firm submitted only a self-certified annual Turnover Certificate instead of a Chartered Accountant certified one and as such, being not in conformity with the said Clause of the ITB, the TEC found the petitioner 'non-responsive' in the technical bid.

**6.** Mr. G. Tarak, learned Standing counsel appearing for the respondent RWD has concurred with the submissions made by Mr. Ete, the learned Sr. Addl. Advocate General, Arunachal Pradesh.

**7.** I have given due consideration to the above arguments advanced by the learned counsels of both sides and considered the averments made in the petition

along with the documents annexed thereto as well as the relevant Departmental file placed by the State respondents.

**8.** For convenience, the relevant Clause 4.4 A of the ITB is extracted herein below:

*"4.4.A To qualify for award of the Contract, each bidder should have in the last five years:*

*(a). Achieved in any one year, a minimum financial turnover (as certified by Chartered Accountant, and at least 50% of which if from Civil Engineering construction works) equivalent to amount given below:*

*(i). 60% of amount put to bid, in case the amount put to bid is Rs. 200 lakhs and less.*

*(ii). 75% of amount put to bid, in case the amount put to bid is more than Rs. 200 lakhs.*

*The amount put to bid above would not include maintenance cost for 5 years and the turnover will be indexed at the rate of 8% per year.*

*If the bidder has executed road works under Pradhan Mantri Gram Sadak Yojana in originally stipulated completion period, the financial turnover achieved on account of execution of road works under PMGSY shall be counted as 120% for the purpose of this sub-clause.*

*In Naxal/Left Wing Extremist Affected District, the figure of 60% and 75% in (i) and (ii) above would be replaced by 50%.*

*(b). Satisfactorily completed, as prime Contractor or sub-contractor, at least on similar work equal in value to one-third(one-fourth in case of Naxal/LWE affected District) of the estimated cost of work (excluding maintenance cost for five years) for which the bid is invited, or such higher amount as may be specified in the Appendix to ITB. The value of road work completed by the bidder under Pradhan Mantri Gram Sadak Yojana in originally stipulated period of completion shall be counted as 120% for the purpose of this Sub-Clause."*

**9.** The relevant minute at serial No. 9 of the minutes of technical bid evaluation, dated 03.10.2018, in respect of the petitioner firm reads –

*"9. M/S Tamchi Kujuk*

*(i) Bidder has not furnished CA certified copy of annual volume of civil engineering/similar nature of work performed as prime contractor.*

*Hence, technical bid is declared Non-responsive under Section 2, Clause 4.4. A(a) of ITB."*

**10.** Perusal of the undisputed Turnover Certificate submitted by the petitioner firm appears to be not certified by a Chartered Accountant and it is a self certified document as well as undated and without any certificate on its top or below the contents so certified. The said certificate is apparently not in conformity with the essential one of the conditions precedent for becoming responsive in technical bid provided in Section 2, Clause 4.4. A(a) of ITB and as such, in the opinion of this Court, the technical bid of the petitioner-firm is legally made 'non-responsive' by the TEC for the said contract work under the PMGSY Scheme viz, "Road from L030 road of Lower Subansiri District to Tali Block HQ. (Stage-1), Package No. AR/14/08/058". In such given facts and circumstances, omission to consider the complaints submitted by the petitioner to the respondent authorities, although ought to have considered and disposed of by the authority concerned, did not vitiate thereby the technical bid process.

**11.** Resultantly, the writ petition stands **dismissed**.

**12.** The interim order stands vacated.

Return the Departmental files.

**JUDGE**

*Victoria*