

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

ITANAGAR BENCH

WRIT PETITION(C) NO. 62 (AP)/ 2015

**M/s Samco Construction Company, registered
Office at 'E' Sector, Opposite IDBI Bank,
Itanagar, District-Papumpare,
Arunachal Pradesh, represented herein by its
Proprietor Shri Tage Sambio, S/o Late Tage Tailying,
R/o 'ESS' Sector, Itanagar, PO & PS-Itanagar,
District-Papumpare, Arunachal Pradesh,**

....Petitioner

-Versus-

- 1. The State of Arunachal Pradesh represented through the Commissioner, Public work Department (PWD), Govt. of Arunachal Pradesh, Itanagar.**
- 2. The Chief Engineer (Central Zone-A), Public Work Department (PWD), Govt. of Arunachal Pradesh, Itanagar.**
- 3. The Superintending Engineer, Yachuli Civil Circle, Public Work Department (PWD), Arunachal Pradesh, Camp at Naharlagun.**
- 4. The Executive Engineer, Public Work Department (PWD), Ziro Division, Lower Subansiri District, Arunachal Pradesh.**

5. **M/s APIDCOL, Abotani House, A1/A2-Ganga Market, Itanagar, PO/PS- Itanagar, District-Papumpare, Arunachal Pradesh.**

....Respondents

6. **The Divisional Accountant, Public Work Department (PWD), Ziro Division, Lower Subansiri, Arunachal Pradesh.**

....Proforma Respondent

- B E F O R E -

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH

For the petitioner : Mr. K. Tama, Advocate.

For the respondents : Mr. G. Deka, Sr. GA.

Date of hearing : 27-04-2015

Date of judgment : 30-04-2015

JUDGMENT & ORDER (CAV)

Heard Mr. K. Tama, learned counsel appearing on behalf of the petitioner and Ms. G. Deka, learned Senior Govt. Advocate appearing on behalf of the State respondents. None has appeared on behalf of the respondent No.5.

2]. The Executive Engineer, PWD, Ziro Division floated Notice Inviting Tender (NIT) dated 02-09-2014 for construction of Road from Pai Gate to Club Road i/c. Hill Top road in District Head Quarter, Ziro at the estimated cost of Rs.8,21,86,000/-. The petitioner amongst others participated in the tender

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process and he was declared qualified in the technical bid along with 3 other firms. In the opening of financial bid, the petitioner was declared to be the lowest in LI. He being the lowest bidder was expecting that the contract work will be offered to him by the State respondents but the State respondents awarded the contract to the private respondent No.5 i.e. M/s APIDCOL.

3]. The petitioner obtained the comparative statement on the bill of quantities for item rate bids prepared by the respondent No.4, Executive Engineer, Ziro PWD Division justifying the prevailing market rates of materials on his own sweet will and pleasure and in fact, it is much higher rate from the actual market rate. After preparation of the comparative statement, the Executive Engineer, Ziro PWD Division, forwarded the same to the Chief Engineer, Central Zone-A without properly assessing the prevailing market rate, issued the impugned approval letter in favour of the private respondent No.5.

4]. It is further alleged by the petitioner that the respondent No.4, Executive Engineer, Ziro PWD Division, while preparing comparative statement has not obtained the certification from the Divisional Accountant (proforma respondent No.6), which is apparently violation of Section 20.2.2(3) of the CPWD Works Manual 2014, which mandates that the comparative statement on bill of quantities for item rate bids should be certified by the concerned Divisional Accountant.

5]. It is alleged by the petitioner that the justified prevailing market rate compared by the Executive Engineer (respondent No.4) is exorbitant, illusory and unrealistically high and the same is prepared with mala fide intention to favour the private respondent No.5, contradicting his own prevailing market rate within the span of 4 days. Aggrieved by the impugned approval order, the petitioner filed a representation dated 24-01-2015 before the Chief Engineer

(respondent No.2) but the said representation of the petitioner has not yet been disposed of.

6]. Respondent Nos. 2 to 4, in their affidavit-in-opposition, have averred that the estimated cost of tender is merely a rough guide. The acceptance of the tender has been done by satisfying the reasonability of the justified rate as per Section 20.4.3 of CPWD Works Manual 2014. In para 2 (i),(ii),(iii), (iv) and (v) of their written argument/affidavit-in-opposition, the respondents have stated as follows:-

i) The estimated cost put to tender is merely a rough guide. The acceptance of the tender has been done by satisfying the reasonability of the justified rate as per section 20.4.3., of CPWD Works manual 2014. While analyzing the rates, the prevailing market rate of labour, materials, etc have been considered as per clause-20.4.3.1 of CPWD Works Manual 2014. The estimated cost put to tender was prepared based on the APSR-2010. Technical sanctioned in respect of the C/o road from Pai gate to Club road i/c Hill Top road in District Head quarter Ziro (Sh:- WBM-I, CC Pavement, CC Drain with Slab coverage & Slab Culvert) Phase-I was sanctioned vide CEAP (CZ/WG-06/02/Ziro/SPA/2012-13/11212-16 dated 26.03.2013 and rates adopted is based on "Arunachal Pradesh Scheduled Rate (APSR), 2010". Therefore, the estimated cost shown in tender is Rs 821.86 Lakhs. The jurisdiction rate is made base on the current market rate of 2014. Now, the quoted bid can be varied up to 10 % over justified amount. The market rate considered for jurisdiction/analysis of rate are prevailing market rate of 2014. Therefore, it is inevitable that the justified rate applied in comparative statement is 6.1 % higher than the estimated cost put to tender in the invitation for Bid (IFB) dated 02-09-2014.

ii). The nature of work of C/o road from Reru to Ring road via Mide in Lower Subansiri District Ziro is different to some extent from the work. C/o road from Pai gate to Club road i/c Hill Top road in district Head quarter Ziro (Sh:- WBM-I, CC Pavement, CC Drain with Slab coverage & slab culvert) Phase-I. The work in hand i.e., c/o road from pai gate to Club i/c Hill top road in District Head quarter Ziro (Sh:- WBM-I, CC pavement, CC drain with slab coverage & slab culvert),phase-I is a specialized job where he major competent of work is cement concrete pavement with mix design of M35 grade which is much higher grade than the cement concrete component work of C/o Road from Reru to Ring road via. Mide in Lower Subansiri District. Therefore, Grade of cement and steel to be used in the work in hand have been specified as OPC Grade-53 conforming to IS 8112-1976 and HYSD bars conforming to IS-1786-2008 Fe 500 manufactured by SAIL or TATA in SL. No. 1 & 2 of clause-41 of contract data of bidding document. The prevailing market rate at Itanagar/ Banderdwa for cement is Rs 8400.00 per MT and Rs 59,465.71 per MT for steel. While considering the carriage rate as per analysis of these items from Banderdewa /Itanagar to Ziro the cost of Cement and Steel is worked out to be Rs 11,309.14 MT and Rs 62,374.85 per MT respectively at Ziro. The stone aggregates and sand for the work in hand are proposed to be brought from in and around Yazali quarry with an average lead of 50.00Km from the site of work.

iii). The C/o road from Reru to Ring road via Mide is a village road where less traffic is anticipated for which no specified grade of cement and steel have been mentioned in the tender document. So, Puzzolona Portland Cement (PPC) and steel which were available at Ziro had been proposed for this work. It was also propose to use stone aggregate and sand from the locally available quarry of Ziro with an average lead of 20 km.

iv). Therefore, the market rate of cement, steel, stone aggregates and sand are different due to different Grade / Specification of cement and steel and lead difference for cartage of aggregate for both the work. However, the market rate of labour is same for both the works.

V). The works, C/o road from Reru to Ring road via. Mide in Lower Subansiri District, Ziro have been rejected by the competent authority on the ground that all the tenders were beyond 10 % variation over justified amount under the terms and condition specified at SL. No. 22 of additional a special condition of tender and in accordance wit hapoara20.4.3.2 of CPWD Works manual and ordered for retendering vide No CEAP (CZ-A)/WTC – 8/Tender/CRF/2014-15/4509 dated 20/03/2015 of Chief Engineer, Central Zone-A, PWD Itanagar and the letter No-SEYCC/Cont – 2(i)/2014-15/Pt-vii/4286 dated 27.03.2015 of superintending Engineer, Yachuli Circle, PWD. Hence, the market rate considered in justification / analysis of arte for the work C/o road from Reru to Ring road via, Mide cannot be compared with the market rates of materials for the work in hand.

7]. Ms. G. Deka, learned Senior Govt. Advocate has submitted that the justified rate was prepared by the expert committee on the basis of the prevailing market rate. By filing the affidavit-in-reply, the petitioner has sought for setting aside the award of contract on the following grounds.

1) He being the lowest bidders amongst the qualified tenderers, his bid should be accepted;

2) Clause 41 of the contract data is in violation of Section 20.4.31 of the CPWD Manual;

3) Clause 25 of the additional document 'above' is replaced by 'beyond';

4) The authority has changed the rule and thereby causing loss to the public exchequer.

8]. The contention of the State respondents is that the justified market rate has been prepared by the expert committee on the basis of the prevailing market rate and as per Section 20.4.3 of CPWD Works Manual, the best quality of materials i.e. iron, steel and cement have been procured as per Clause 41 of the Contract Bid. The word 'above' and 'beyond' signifies the same meaning.

9]. The tender document was prepared way back in 2013 on the basis of sanctioned amount at the time of prevailing market rate. The petitioner in his affidavit-in-reply has contended that the respondent authorities have not considered the prevailing market rate of the materials as the rate of Steel (SAIL) was much lower than the rate adopted by the respondent No.4 for TATA TISCON and even the weight of per piece steel of TATA TISCON is not shown in order to confuse the Court. Similarly, the cement was available in much lower rate than the adopted market rate of respondent No.4.

10]. It is submitted by the learned Senior Govt. Advocate that in respect of construction of road from Reru to Ring road via Mide in Lower Subansiri District, whose price rate has been compared by the petitioner, fresh tender has been issued and tender will be opened on 28-04-2015.

11]. In support of his arguments, the learned counsel for the petitioner has relied upon the case of **Tata Cellular Vs. Union of India**, reported in **1994 (6) SCC 651**, wherein, it has been observed by the Apex Court that "the court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

12]. In the cited case of **Raunaq International Ltd. Vs. I.V.R. Construction Ltd. And Others**, reported in **(1999) 1 SCC 492**, the Apex Court, in para 16 of the judgment, has observed as follows:-

"16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work can be legitimately paid in order to secure proper performance of the contract and good quality of work – which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee."

13]. In the instant case, there is a decision of expert evaluation committee and this Court cannot substitute its own decision. There is no other ground to interfere with the decision of expert evaluation committee.

14]. The writ petition is therefore dismissed and disposed of.

JUDGE

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