

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

**1. WP (C) 368 (AP) 2014**

M/s Gepong, having registered office at  
B Sector, Naharlagun, Papum Pare  
District, Arunachal Pradesh, represented  
by its constituted Attorney Shri Nabam  
Simon, r/o: 'C' Sector, Itanagar, Papum  
Pare District, Arunachal Pradesh.

.....Petitioner

Advocates for the Petitioner:

Mr. D. Panging  
Mr. D. Soki  
Mr. V. Jamoh  
Ms. D. Tamuk  
Ms. E. Perme  
Mr. M. Doji

**-Versus-**

1. The State of Arunachal Pradesh, represented by Commissioner, Public Works Department, Govt. of Arunachal Pradesh, Itanagar.
2. The Chief Engineer, Public Works Department, Eastern Zone, Govt. of Arunachal Pradesh, Itanagar.
3. The Superintending Engineer, Boleng Works Circle, Public Works Department, Govt. of Arunachal Pradesh, Boleng.
4. The Executive Engineer, Public Works Department, Boleng Division, Boleng, East Siang District, Arunachal Pradesh.
5. The Director, Information & Public Relations, Papu-Nallah, Naharlagun, Govt. of Arunachal Pradesh.
6. M/S Capital Enterprises, Naharlagun Registered Office at C-Sector, Barapani Bazar Naharlagun, PO/PS Naharlagun, District Papum pare, Arunachal Pradesh.

.....Respondents

Advocates for the Respondents:

Mr. G. Deka, Learned Sr. Govt. Advocate  
Mr. D. Majumdar.

**2. IA (WP) 12 (AP) 2015**

1. The Chief Engineer, Public Works Department, Central Zone, (B), Govt. of Arunachal Pradesh, Itanagar.
2. The Superintending Engineer, Boleng Circle, Public Works Department, Govt. of Arunachal Pradesh.
3. The Executive Engineer, Public Works Department, Boleng Division, Boleng, East Siang District, Arunachal Pradesh.

.....Applicants

Advocates for the Petitioner:

Ms. G. Deka, learned Sr. Govt. Advocate

**-Versus-**

M/s Gepong, having registered office at B Sector, Naharlagun, Papum Pare District, Arunachal Pradesh, represented by its constituted Attorney Shri Nabam Simon, r/o: 'C' Sector, Itanagar, Papum Pare District, Arunachal Pradesh.

.....Opposite Party

Advocates for the Respondents:

Mr. D. Panging

**3. IA (WP) 62 (AP) 2015**

M/s Capital Enterprise, Naharlagun, having its registered Office at C-Sector, Barapani Bazar, Naharlagun, PO/PS Naharlagun, District Papum Pare, Arunachal Pradesh, represented by its proprietor, Smti Senbom Taipodia, Resident of C-Sector, Brapani Bazar, Naharlagun, District Papum Pare, Arunachal Pradesh.

.....Applicant

Advocates for the Petitioner:

Mr. K. Eshi

**-Versus-**

1. M/s Gepong, having its registered office at B-Sector, Naharlagun, Papum Pare District, Arunachal Pradesh, represented by its constituted Attorney Shri Nabam Simon, R/o-C, Sector, Itanagar, Papum Pare District.
2. The Commissioner, Public Works Department, Government of Arunachal Pradesh, Itanagar.
3. The Chief Engineer, Public Works Department, Eastern Zone, Government of Arunachal Pradesh, Itanagar.
4. The Superintending Engineer, Boleng Works Circle, Public Works Department, government of Arunachal Pradesh.
5. The Executive Engineer, Public Works Department, Boleng Division, Boleng, East Siang District, Arunachal Pradesh.
6. The Director, Information & Public Relations, Papum Nallah, Naharlagun, Government of Arunachal Pradesh.

.....Opposite Parties

Advocates for the Respondents:

Ms. G. Deka, learned Sr. Govt. Advocate  
Mr. D. Panging

**:::BEFORE:::**

**HON'BLE JUSTICE (MRS.) Dr. INDIRA SHAH**

Date of hearing : **20.08.2015**

Date of Judgment & Order : **28.08.2015**

**JUDGMENT & ORDER(CAV)**

Heard Mr. Dicky Panging, learned counsel for the petitioner.

Also heard Ms. Geeta Deka, learned Senior Government Advocate, for State Respondents No. 1 to 5, in the said writ petition as well as applicant of I.A. 12(AP)2015; as well as Mr. Lobsang Tenzin, learned counsel, appearing for private Respondent No. 6 in the said writ petition as well as applicant of I.A. 62(AP)2015.

**2.** By filing this petition, under Article 226 of the Constitution of India; the instant petitioner has challenged the Notice Inviting Bid(NIB, for short) issued by the Executive Engineer, Boleng PWD Division, for construction of road from Yembung-Yemsing to Tarak village(Phase-I), in East Siang District of Arunachal Pradesh (15.80KM), which was published in the local English Daily 'Independent Review', on 12.09.2014.

**3.** The said Executive Engineer issued NIB for construction of the roads, above-mentioned, at an estimated cost of Rs. 2818.30 lakhs. The said NIB was published on 12.09.2014, in the local English Daily 'Independent Review'. As per the said NIB, the date of receipt of application for procuring tender papers was 05.09.2014 to 28.09.2014. It was alleged by the petitioner that the said newspaper was not available to the general public as all the issues of the said date, were picked up by some individuals in connivance with the respondent authorities. Hence, the grievance of the petitioner is that the said newspaper 'Independent Review' was not widely circulated where the said NIB was published. Moreover, the respondent authorities had not strictly followed the procedure as laid down under the provisions of Central Public Works Department(CPWD) Manual, and other administrative instructions.

**4.** The State Respondents as well as private Respondent No. 6/misc. applicant, by filing separate Interlocutory Applications(IAs) registered as I.A. 12(AP)2015 and I.A. 62(AP)2015, have sought for modification/alteration/vacation of the interim order dated 20.10.2014 whereby this Court directed the respondent authorities not to finalize/settle and award the work to anybody till the returnable date.

**5.** As per Clause 17.1 of CPWD Manual, wide publicity should be given to the Notice Inviting Tender(NIT). The tenders must be invited in the most open and public manner possible by advertisement in the website/press, and by notice, in writing.

**6.** Clause 17.5 speaks of the *time limit for publicity of tenders* which says that time limit between date of publication on website or press, whichever, is earlier and the date of receipt of the tenders, may be as follows:-

- (i). 7 days in case of works with estimated cost put to tender upto Rs. 20 lakhs.
- (ii). 10 days in case of works with estimated cost put to tender between Rs. 20 lakhs to Rs. 2 crores.
- (iii). 14 days in case of works with estimated cost put to tender more than Rs. 20 lakhs.

However, sub-clause 2 to the aforesaid 17.5 Clause, says that the above time limit may be varied at the discretion of the NIT approving authority keeping in view the exigencies of works.

**7.** It is the contention of the petitioner that in the 2<sup>nd</sup> week of October, 2014, he learnt that NIB was issued for construction of the aforesaid road. The petitioner, being a Class-I Contractor; subscribes all local dailies of the State of Arunachal Pradesh and therefore, he sought written clarification from the Deputy Director-cum-PIO of the State Central Library, on 10.10.2014, as to whether the edition of 'Independent Review' for 12.09.2014 was received. The said PIO on the body of his application, remarked that the issue of the 'Independent Review' paper, was not received by the said Library. Likewise, the PIO of the District Library, Naharlagun, also issued a certificate to the effect that no copy of the 'Independent Review' was received on 12.09.2014. He also went to some other newspaper distributors like Ranjan Kumar Boro and Hari Om Paper Agency of the Itanagar Capital Complex and enquired about the receipt of the issue of said paper on 12.09.2014. The distributor Boro informed the petitioner that he did receive the copies of the 'Independent Review' published on 12.09.2014, however, according to him, some unidentified persons forcefully took away all the copies of the

'Independent Review' dated 12.09.2014 and as such, he could not supply the copies of the 'Independent Review' to the intending customers.

**8.** 'Hari Om Paper Agency' also certified that no edition of the 'Independent Review' was received by the said Agency on 12.09.2014 and as such, the same could not be distributed to the subscribers.

**9.** The State Respondents as well as private Respondent No. 6, in their counter affidavits, have averred that the copy/issue of the 'Independent Review' published on 12.09.2014, was widely circulated throughout the State of Arunachal Pradesh including various vendors of the Itanagar Capital Complex. They have also annexed various certificates issued by different vendors of Itanagar Capital Complex, to show that the paper was available and distributed to the customers, on 12.09.2014, itself. Furthermore, they have also averred that the NIB was uploaded in the website of the Department concerned on 30.08.2014, itself.

**10.** The State Respondents have further contended that for publication of the said NIB in any of the local newspaper of the State, it was forwarded to the Department of Information and Public Relations(DIPR, for short), on 30.08.2014, itself. However, for delay in publication of the said NIB, the said Department may be held responsible. Moreover, 14 days time limit is discretionary and not mandatory in terms of Clause 17.5 sub-Clause (2) of the CPWD Manual.

**11.** It is also the contention of private Respondent No. 6, that in pursuance to the said NIB, altogether 4(four) Firms had participated in the tender process and technical bids of all the 4(four) Firms were opened by the Department concerned, on 26.09.2014, wherein on scrutiny of technical bids of the said 4(four) Firms, the Tender Evaluation Board had rejected the bids of one of the said 4(four) Firms.

**12.** It is to be noted that whether the newspaper 'Independent Review' could or could not, be circulated on 12.09.2014, is a disputed question of facts. Situated thus, this Court will not inquire into the disputed question of facts. However, from perusal of Annexure-10 so appended by the writ petitioner to this petition, by himself; it appears that Hari Om Paper Agency, Post Office Road, Naharlagun, issued the said certificate to the effect that the Agency concerned, did not receive the copies of the newspaper 'Independent Review' published on 12.09.2014, and therefore, the same could not be distributed to the subscribers. The said certificate was issued by the vendor on 12.09.2014, itself, which goes amply to suggest that the petitioner had the prior and adequate knowledge of publication of the NIB, in question, in the said newspaper 'Independent Review' on 12.09.2014. So far as time limit of the tender or NIB is concerned, it specifically says about the publication of the same, either, in the website, or, press. There is no denial to the fact that the said NIB was uploaded, on 30.08.2014, itself; by the authorities concerned, and it was made available to all the intending bidders.

**13.** In the attending facts and circumstances of the case, at hand, as highlighted above, this Court, without further delving into the matter, at hand, is of the considered view that the instant writ petition lacks substance and merit. Hence, the instant writ petition is hereby dismissed.

**14.** The connected I.A.s, as noted above, shall also stand closed and disposed of, accordingly.

**16.** In view of dismissal of this matter, interim order passed by this Court, on 20.10.2014, shall stand vacated. Respondent authorities shall proceed with rest of the proceedings in connection with the tender process, in question, without undue delay.

**JUDGE**

*Bikash*

