IN THE GAUHATI HIGH COURT

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

ITANAGAR BENCH

WRIT PETITION (C) 195 (AP) / 2009

1. Shri Dolang Binod, aged about 35 years,
   S/o Lt. Dolang Hania,
   r/o Village Lumba, PO- Palin,
   PS- Sangram,
   District- Kurung Kumey, A.P.

2. Shri Langkung Ragia, aged about 34 years,
   S/o. Lt. Langkung Tasuk,
   r/o Parsi Parlo, PO-Parsi Parlo,
   District- Kurung Kumey, A.P.

3. Shri Bamang Nylam Raman,
   S/o Shri Bamang Tachu, r/o Village Sera,
   PO- Parsi Parlo,
   District-Kurung Kumey, A.P.

   (Common Cause)

.....**Petitioners.**

By advocate:
Mr. G. Tarak.

-Versus-

1. The State of Arunachal Pradesh represented by
   Commissioner/ Secretary, Education,
   Govt. of Arunachal Pradesh,
   Itanagar.

2. The Project Director, Rajya Mission,
   SSA Itanagar.

3. The District Project Director,
   SSA District Mission,
   Kurung Kumey District,
   Arunachal Pradesh.

4. The District Project Officer,
SSA, Kurung Kumey District,
A.P.

5. The Circle Officer, Parsi Parlo,
Kurung Kumey District, A.P.

6. Shri Pisa Tatup (EAC),
Board Member,
District Kurung Kumey,
Koloriang, A.P.

7. Shri Pisa Guniya, ZPM,
Sarli, Board Member,
Kurung Kumey District, A.P.

8. Shri Tami Nikja, Assistant Engineer,
PWD, Koloriang,
Board Member.

9. Shri Sangha Takam,
Member Secretary,
Village Education Committee,
Govt. Upper Primary School,
Parsi Parlo, Kurung Kumey District,
A.P.

10. Shri Kamrik Tayang, Chairman,
Village Education Committee,
Govt. Upper Primary School,
Parsi Parlo,
Kurung Kumey District, A.P.

11. Shri Lokam Nai, Proprietor,
M/s Lokam Brothers and Company,
r/o Nykum Lapang, Itanagar,
PO/PS: Itanagar,
Papum Pare District, A.P.

.....**Respondents.**

By advocate:
Mr. R. H. Nabam, Sr. G.A.

BEFORE
THE HON'BLE MR. JUSTICE P.K.MUSAHARY

Date of hearing : 4th February, 2010
Date of judgment & order : 3rd March, 2010

JUDGMENT AND ORDER
(CAV)

Heard Mr. G. Tarak, learned counsel for the petitioners and also heard Mr. R. H. Nabam, learned Senior Govt. Advocate, appearing on behalf of Respondent Nos. 1 to 5. None appears for Respondent Nos. 6 to 11.

2. In the instant writ petition, the petitioners have challenged the manner in which the scrutiny of tenders and work order was made by the respondent authorities in favour of the private respondent No.11. The short facts are that a Notice Inviting Tender (NIT) was issued on 17th March, 2009 by the District Project Director, SSA District Mission, Kurung Kumey District (hereinafter referred to as **"District Director"** only) for awarding work for construction of Residential Hostel Building for 50 students under SSA 2008-09 at P/Parlo Upper Primary School under Parsi Parlo Circle. The petitioner No.1 is the President of Kurung Kumey District registered Contractor Association, a district unit of All Arunachal Registered Contractor Association and the petitioners No. 2 & 3 are proprietors of M/s. Regiaku Enterprise and M/s. B.A. Enterprises respectively. The petitioners No. 2 & 3 submitted tender papers but the Board rejected their tenders and recommended the tender of the private respondent No.11 for finalization. Accordingly, the Respondent-District Project Director accepted the tender of the private respondent No.11 and intimated the same vide order No. ED/KK/SSA/CW-93/08-09 dated 31st March, 2009 (Annexure-3 to the writ petition).

3. Mr. Tarak, learned counsel for the petitioners submits that private respondent No.11, Shri Lokam Nai and his brothers are not local residents of Parsi Parlo Circle and

they are not eligible for offering tender as per the terms and conditions laid down in the NIT dated 17th March, 2009. The respondent authorities were pre-determined to settle the work with the private respondent No.11 on some extraneous considerations even before the NIT was issued for which he was allowed to deposit the earnest money amounting to Rs.35,418/- by a Bank Draft on 24-02-2009 i.e. one month before the tender was floated. As per the NIT, an amount of Rs.32,000/- is required to be deposited by the tenderers but the private respondent No.11 had deposited more amount, that is an amount of Rs.35,418/-. The tenders were opened on 28-03-2009 and the Board overlooked the aforesaid irregularities in the tender documents of the respondent No.11, although, the same were pointed out to it and objection was raised before the members of the Board during the time of scrutiny of tender documents. According to the petitioners, the entire NIT proceeding was an eyewash. The Board illegally and arbitrarily rejected the land donation certificate furnished by petitioners and others and accepted the land donation certificate of private respondent No.11 issued by the Village Education Committee (for short **"VMC"**), which is not the competent authority to issue such land donation certificate. It is further contended by the petitioners that the private respondent No.11 constructed one wooden hall with tin roofing measuring about 10 metres near the school compound in the month of January, 2009 and February, 2009 i.e. before the work order was issued. The same was neither approved by the State authority nor was it as per design and as such, it is evident that tender process was initiated only to legalise the aforesaid illegal construction and misuse of fund, which was allotted for construction of school hostel building.

4. The contentions of the petitioners have been countered by the Respondent Nos. 1 to 4 by filing an affidavit-in-opposition. The main contentions in the said affidavit are that the land donation certificate issued from the office of the Circle Officer in favour of the petitioners have been cancelled by the Board after proper verification and the private respondent No. 11 was found to have land possession certificate duly issued by the Circle Officer and it was found that the tenders of the petitioners were not submitted through VMC and they are not having any land near the concerned ME School for construction of the hostel building. As regard the deposit of earnest money, it is stated in para 8 of the counter affidavit that the private respondent No.11 might have deposited his earnest money in anticipation and it cannot be the sole reason to vitiate of tender process, which has been conducted fairly in terms of the guidelines of the SSA and NIT.

5. Mr. Nabam, learned Sr. Govt. Advocate, at the time of hearing, produced the following documents;

(i) Verification report dated 30-10-2009 on construction of 50 boarder residential hostel building at Parsi Parlo M.E. School in Kurung Kumey District under SSA 2008-09 submitted by Coordinator (Civil Works) SSA District Mission, Kurung Kumey District.

(ii) Letter No.PP/UPS/VEC/03-2009-10 dated 30th November, 2009 issued by the Head Master In-Charge cum Member Secretary, Govt. Upper Pry. School, P/Parlo.

According to aforesaid verification report, the work has been completed successfully as per standard, specification and direction of the Engineer-in-Chief. As per the letter dated 30th November, 2009, M/s Lokam Brothers & Company (Respondent No.11 in the writ petition) has

completed the construction work of hostel building and the same has been handed over to the Head Master in-charge aforesaid satisfactorily. It is, however, submitted by Mr. Nabam, learned Sr. Govt. Advocate that no payment has been made to the Respondent-Contractor for the aforesaid work in compliance of the interim order of this Court passed on 29-05-2009.

6. I have perused the interim order passed on 29-05-2009, which provides that "***Meantime the impugned work order dated 31.3.09 (Annexure-3) in favour of respondent No.11 shall remain stayed***". The said interim order was not for withholding of the payment for construction of work but for staying the construction work. It is not understood, in spite of such order staying the construction work, how the Respondent-Contractor could continue with the construction work and complete the same in September, 2009. The matter requires inquiry by the Respondent-Commissioner/Secretary, Education Department, Govt. of Arunachal Pradesh to find out whether the allegation made by the petitioners that the construction work was, in fact, awarded to Respondent No.11 before the NIT was floated and the said NIT was issued as an eyewash inasmuch as the Respondent-Contractor deposited the security/earnest money by a Bank Draft before the NIT was issued and there was a pre-plan to award the work to it although its proprietor Shri Lokam Nai is not a local resident of Parsi Parlo and does not fullfil the eligibility criteria mentioned in the NIT.

7. I have gone through the verification report dated 30.10.2009 aforesaid as produced by Mr. Nabam, learned Sr. Govt. Advocate, at the time of hearing, which reads as under-

"VERIFICATION REPORT ON C/O 50 BOARDERS RESIDENTIAL HOSTEL BUILDING AT PARSI PARLO M.E. SCHOOL IN KURUNG KUMEY DISTRICT, UNDER SSA 2008-09.

In pursuance of order No.ED/KK/SSA/CW/2008-09, Dated Koloraing the 16th Oct, 2009. The 50 Boarder Residential hostel Building construction under SSA 2008-09 against Parsi Parlo UPS of Kurung Kumey District have been physically verified by Self (Coordinator Civil Works) and found that the work has been competed successfully as per standard specification and direction of Engineer-in-Chief (Self).

i)	**Building work:**	**C/o 50 Boarder Residential Hostel Building.**
ii)	**Status:**	**Building construction completed.**
iii)	**Date of Verification:**	**29/10/09**
iv)	**Agent:**	**M/s Lokam Brother & Company**

Sd/-(Toku Talo)
Coordinator (Civil Works)
SSA Dist. Mission
Kurung Kumey District:
Koloriang.

I have also perused the aforesaid letter dated 30th November, 2009, which is reproduced below:-

OFFICE OF THE
VILLAGE EDUCATION COMMITTEE, GOVT. UPPER PRIMARY SCHOOL, PARSI-PARLO: KURUNG KUMEY DISTRICT
PARSI-PARLO CIRCLE (AP)

09402031793(m)

Ref. No.PP/UPS/VEC/03-2009-10 **Dated P/Parlo, the 30 Nov, 2009**

To

The Project Officer,
SSA, District Mission,
Kurung Kumey District,
Koloriang.

SUB: SUBMISSION OF COMPLETION CERTIFICATE.

This is to certify that the M/s Lokam Brothers & Company (Shri Kamdek Maya, Attorney) has been completed for C/o Residential Hostel Building for 50 Students at Parsi-Parlo Upper Primary School (UPS) under Parsi-Parlo Circle, under SSA 2008-09. The work have been executed accordance with the approved plans and technical specification,

vide your sanctioned order No.ED/KK.SSA/CW-93/08-09/06 dated Koloriang the 31st March, 2009. The undersigned have handover the building satisfactorily.

Hence, you are requested to payment the contractor as early as possible.

Place: Parsi Parlo
Date: 30/11/09

Yours faithfully,

Sd/- **(SANGHA TAKAM) J/T**
Head Master In-Charge
Cum
Member Secretary,
Govt. Upper Pry. School, P/Parlo."

According to Mr. Nabam, the work has been executed successfully as per standard, specification and direction of the Engineer-in-Chief and the completed building was handed over to the Head Master in-charge of the school and as such the allegations of the petitioners that Respondent No.11, constructed one wooden hall with tin roofing measuring about 10 metres near the school compound way back in the month of January, 2009 and February, 2009 and the same is neither approved by the State authority nor was it as per the design, are not correct.

8. Having perused the above verification report and letter, I could not take a view that allegations made by the petitioners are without any basis. Moreover, the Respondent No.11, against whom allegations have been made, has not filed any counter. This Court, therefore, is not in a position to record any finding. In such situation, it is felt necessary to have the matter enquired to find out as to whether the Respondent No.11 constructed one wooden hall with tin roofing measuring 10 metres near the school compound in January, 2009 and February, 2009 without being approved by the authorities concerned and the said tender process was initiated as an eyewash to legalize the same without

constructing the school hostel building for 50 students which is not as per design and the fund has been siphoned of by the Respondent No.11 in collusion with some others.

9. This writ petition is found to be infructuous in view of the materials placed by the learned Sr. Govt. Advocate inasmuch as the building is stated to have been completed and handed over to the School Head Master concerned. Accordingly, this writ petition is treated as infructuous and the same stands closed.

10. However, in the interest of public, it has become expedient to direct an enquiry to go into the alleged irregularities and illegalities committed by some authorities and persons including the respondent No.11 in the matter of awarding the construction work and execution of the work. It is accordingly directed that Respondent-Commissioner/ Secretary, Govt. of Arunachal Pradesh, Department of Education shall himself make an inquiry or cause the inquiry through a senior officer of the department in the rank of Joint Secretary into the allegation of irregularities and illegalities as alleged in the writ petition and submit the report to the Registry of this Court within a period of 3(three) months from the date of receipt of a copy of this order.

11. The Respondent No.1, Commissioner/ Secretary, Education Department, Govt. of Arunachal Pradesh shall be at liberty to take appropriate departmental or legal action against the persons, if they are found involved in the commission of said irregularities and illegalities and, if necessary, fix the responsibility and realise the amount, if found misused or misappropriated by anybody. Be it made clear that if payment is not yet paid, the same shall not be paid to the Respondent

No.11 until the inquiry is made and the report submitted to the Registry of this Court.

12. The Registry shall send a copy of this order along with a copy of the writ petition and the affidavit-in-opposition filed by the State respondents to the Respondent No.1/ Commissioner/Secretary, Education Department, Govt. of Arunachal Pradesh, for taking onwards action.

JUDGE

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