

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

1. **WA 37 (AP) 2017**

M/s Vivek Enterprises, having head office,  
At Taha Complex, G-Sector, Itanagar,  
Represented by its sole proprietor Shri Taha  
Tagru, S/o Tari Tagru, R/o G-Sector, Itanagar,  
Dist-Papum Pare, Arunachal Pradesh.

**Adv. for the appellant**  
**Mr. D. Mazumdar, Sr. Adv.**

.....*appellant*

**-Versus-**

1. The State of Arunachal Pradesh, represented by  
the Chief Secretary to the Govt. of Arunachal  
Pradesh, Itanagar & Others.

.....**Respondents**

**Adv. for the respondent**  
**Mr. S. Saikia, learned Addl. Advocate General, A.P.**

2. **WA 33 (AP) 2017**

1. The State of Arunachal Pradesh, represented by  
the Chief Secretary to the Govt. of Arunachal  
Pradesh, Itanagar & Others.

**Adv. for the appellant**  
**Mr. S. Saikia, learned Addl. Advocate General, A.P.**

.....*appellant*

**-Versus-**

M/s Tama Fabrication Works, having Head office  
At A-Sector, Naharlagun, represented by its sole proprietor  
Shri Techi Tama, S/o Techi Rak, R/o A-Sector, P.O./P.S.-Naharlagun,  
Dist-Papum Pare, Arunachal Pradesh.

**Adv. for the respondent**  
**Mr. R. Dubey, learned counsel for respondent No.6.**

.....**Respondents**

Date of hearing : **21-09-2017**  
Date of judgment (Oral) : 21-09-2017.

**:::BEFORE:::**

**HON'BLE MR JUSTICE A M BUJOR BARUA  
HON'BLE MR. JUSTICE MIR ALFAZ ALI**

Date of hearing - **21.09.2017.**

Date of judgment (Oral)- **21.09.2017.**

**JUDGMENT & ORDER (ORAL)**

*(Bujur Barua, J)*

Heard Mr. D. Mazumdar, learned Sr. counsel for the appellant. Also heard  
Mr. S. Saikia, learned Addl. Advocate General for the State of Arunachal Pradesh  
and Mr. R. Dubey, learned counsel for the respondent No. 6.

2] A NIT under the nomenclature in Notice Inviting e-Tender was issued by the Govt. of Arunachal Pradesh CRP Project, for inviting bids from the interested tenderers for construction of road from Kakoi to Boginadi road via Kui, Dirgha & Borsutum. The last date and time of receiving of bid was fixed on 24.04.2017 and time for opening of financial bid was fixed on 09.05.2017 but subsequently, due to certain intervening circumstances, the last date of opening of the financial bid was re-fixed on 27.06.2017.

3]. By uploading in the website, the respondent authorities by a notice dated 23.06.2017 had notified that the appellant M/s Vivek Enterprises and another tenderer M/s Premdhan Construction Company were found to be technically qualified. By another communication of the same date, as found in the website, the respondent No.6 was also informed that their technical bid was rejected. Against the said rejection of the technical bid, the respondent No. 6 had preferred WP (C) 556 (AP) 2017. According to the respondent No. 6, the bids were rejected on the ground that they had not provided the required information as required to be provided under Clause 4.5.5.8 of the terms and conditions. Clause 4.5.5.8 requires the bidder to provide accurate information on any litigation or arbitration that may have resulted from any completed or under execution contract by them for the last 5 years. According to respondent No. 6, the said respondent had no litigation history other than the 2 (two) writ petitions being WP (C) 637 (AP) 2016 & WP (C) 69 (AP) 2017. According to respondent No. 6, WP (C) 637 (AP) 2016 pertains to certain dispute regarding a decision as regards the justified rates whereas in the other writ petition being WP (C) 69 (AP) 2017, the said respondents were respondents therein and not the petitioner and he had no knowledge about the said writ petition at the time of submission of his bids.

4]. The learned single Judge by its judgment and order dated 02.08.2017 accepted both the contention of the respondent No. 6 and accordingly, directed that final bid be accepted and the technical bid of the respondent No. 6 was found to be L1 bidder. Against the said judgment and order of the learned single Judge, the present appeals have been preferred one by the State respondent authorities other by the bidder whose technical bid was earlier accepted.

5]. Mr. D. Mazumdar, learned Senior counsel by referring to Clause 4.3 (j) of the terms and conditions states that requirement is that information regarding any litigation, current or during the last 5 years, in which the bidder is involved, are

required to be provided but as the said requirement of Clause 4.3 (j) was not brought to the notice of the learned single Judge, therefore, the conclusion of the learned single Judge is to some extent incorrect. According to Mr. Mazumdar, learned Sr. counsel as the information regarding any litigation current or during the last 5 years, in which the bidder is involved, are required to be provided, therefore, it is immaterial whether the litigations or arbitrations resulted from any contract completed or under execution by him over the last 5 years as provided in Clause 4.5.5.8. The said aspect raised by the petitioner may be considered by the respondent authorities while evaluating the technical bid of the respondent No. 6 as directed by the learned single Judge. But, however, a more serious allegation have been made that the respondent No. 6 in his tender bid had submitted certain documents which are false and fabricated. The said information had subsequently come to the knowledge of the appellant inasmuch as, an FIR had been lodged by some persons against the respondent No. 6 alleging such fraudulent activities.

6]. In this respect, Mr. Mazumdar, learned Sr. counsel states that a complaint has been lodged by the appellant before the respondent authorities on 24.08.2017.

7]. This Court although is considering an appeal by the State authorities as well as one of the bidder against the judgment of the learned single Judge but the writ Court being an equitable Court observes that whenever an information required as regards fraudulent activities are being brought to its notice, the same cannot be ignored.

8]. In such view of the matter, it is deemed appropriate that the ends of justice would be met, if the State respondent authorities-tendering authorities would give a due consideration as to whether the specified documents submitted by the respondent No. 6 are fraudulent or not. It is stated that the respondent No. 6 had submitted certain documents regarding their JCB's and other vehicles which actually pertains to some motor cycles. The aforesaid aspect shall be considered by the respondent authorities-tendering authorities by obtaining an appropriate information from the Transport Department and ascertain as to whether the documents submitted by the respondent No. 6 is false and fabricated. As regards the other documents, where there is an allegation of fraud, the respondent authorities shall cause an enquiry and satisfy itself as regards the authenticity of the documents.

9]. Upon undertaking the said exercise, the respondent authorities shall afford an opportunity to respondent No. 6 to present his view on the allegation and thereafter, shall take a final decision on the matter. After arriving at the final decision, the respondent tendering authorities shall proceed with the NIT and bring the same to its logical end.

10] It is expected that the process of deciding the question as regards to the fraudulent will be taken as expeditiously as possible preferably within a period of one month from today. However, it is made clear that the respondent No. 6 shall co-operate with the respondent authorities as the respondent authorities may require them to do so.

11]. It is also brought to the notice of the Court that by Mr. Mazumdar, learned Sr. counsel that in Clause 37.1, the tender authorities can reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices. The said aspect shall also be taken into consideration by the respondent tendering authorities while taking the final decision.

In terms of the above, this writ appeals stands disposed of.

**JUDGE**

**JUDGE**

Talor