

**THE GAUHATI HIGH COURT**

(The High Court of Assam: Nagaland: Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

**W.P.(C) No. 62(AP)/2016**

M/s Jumke Store  
Nehru Chowk, Opposite DC Office, Aalo  
P.O. & P.S. Aalo, West Siang District,  
Arunachal Pradesh duly represented by its  
proprietor Shri Jumke Karbak, S/o Shri Ejum  
Karbak, a resident of Gumin Nagar, P.O. & P.S.  
Aalo, West Siang District, Arunachal Pradesh  
.....Petitioner

-Vs-

1. The Govt. of Arunachal Pradesh represented by  
the Chief Secretary, Govt. of Arunachal Pradesh,  
Itanagar.  
2. The Commissioner  
PWD, Govt. of Arunachal Pradesh  
Itanagar  
3. The Chief Engineer  
PWD, Central Zone (C/Z), Govt. of A.P.  
Itanagar  
4. The Superintending Engineer  
PWD, Aalo Division, Govt. of Arunachal Pradesh  
P.O. & P.S. Aalo, West Siang (AP)  
5. The Executive Engineer  
PWD, Aalo Division, Govt. of Arunachal Pradesh  
P.O. & P.S. Aalo, West Siang (AP)  
6. The Executive Engineer (Planning),  
Aalo Civil Circle, PWD, Govt. of A.P.  
P.O. & P.S. Aalo, West Siang (AP)  
7. Er. Eagle Sora  
Resident of Jirdin Village, P.O. & P.S. Aalo  
West Siang (AP)  
..... Respondents

**BEFORE**

**HON'BLE MR. JUSTICE SUMAN SHYAM**

For the petitioner : Mr. M. Kato, Advocate  
For the respondent : Ms. G. Ete, Govt. Advocate  
Mr. R. Saikia, Advocate  
Date of hearing and judgment : 09-05-2017

### **JUDGEMENT AND ORDER (ORAL)**

Heard Mr. M. Kato, learned counsel for the writ petitioner. Also heard Ms. G. Ete, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh appearing on behalf of respondent Nos. 1 to 6 as well as Mr. R. Saikia, learned counsel representing respondent No. 7.

2. By filing this writ petition, a challenge has been made to the impugned letter dated 21-01-2016 by means of which, approval for acceptance of the bid offered by the respondent No. 7 in response to the NIT dated 02-01-2016 has been conveyed by the respondent No. 6 to the respondent No. 5.

3. The brief factual matrix of the case, giving rise to the filing of the present writ petition, may be noticed as hereunder. The petitioner is a registered Class-IV (B&R) contractor enlisted under the civil category by the Govt. of Arunachal Pradesh and is entitled to execute various contractual works of civil nature under the respondent authorities. On 02-01-2016, the respondent No. 5 had floated a Notice Inviting Tender (NIT) inviting item rate tenders from eligible Class- III & IV contractors for execution of the contractual work, viz. "Infrastructure Development of SFS College, Yeggo in West Siang district (SH: Construction of Auditorium)" for an estimated cost of Rs. 72,50,000/-. As per the NIT dated 02-01-2016, the last date of

submission of the tenders was fixed on 11-01-2016 and the bids were to be opened on the same day.

4. Clause- 2 of the NIT had stipulated that the provisions of "Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentive Development and Promotional) Act 2015 (Act No. 5 of 2015) shall be applicable. Clause- 3 of the NIT further provided that Permanent Resident Certificate and EPIC card, duly issued by the competent authorities, to be submitted in proof of Assembly Constituency. As per Clause- 18 of the NIT, all contractors in Class- III and IV category, domiciled within the territorial jurisdiction of Assembly Constituency, would be eligible in the bidding process.

5. In response to the NIT dated 02-01-2016, the writ petitioner had submitted his bid. The petitioner claims to be a permanent resident of Gumin Nagar, Aalo, West Siang district in the State of Arunachal Pradesh and therefore, he had submitted a Permanent Resident Certificate along with a copy of the Schedule Tribe certificate as well as PAN card issued by the IT department in support of his address proof. However, the writ petitioner admittedly did not submit the EPIC as per the requirement of Clause- 3 of the NIT. The bids were opened on 11-01-2016 whereafter, it was found that the petitioner had not submitted EPIC as per the requirement of Clause- 3 of the NIT. On the basis of an enquiry made by the respondent No. 5, it had come to the knowledge of the authorities that the name of the writ petitioner

was enrolled in the electoral roll of No. 27- Liromoba Assembly Constituency. Taking note of the said fact, the bid submitted by the petitioner was held to be technically non-compliant. Consequently the bid of the respondent No. 7 was accepted and by the impugned letter dated 21-01-2016 the said decision was conveyed to the competent authority.

6. The respondent No. 7 has filed counter affidavit annexing a copy of the Comparative Statement (CS) of the financial bids prepared by the authorities to show that the respondent authorities had not only considered the technical bid but also the financial bid of the petitioner and rejected the same having found the offer made by the petitioner below 16% of the estimated cost and hence, unacceptable as per Clause 20.4.3.2 of the CPWD Works Manual, 2014. In the counter affidavit, the respondent No. 7 had further pleaded that the NIT itself had made it clear that the provision of the Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentive Development and Promotional Act 2015) (hereinafter referred to as Act of 2015) will be followed. As per the provision of the said act, registered contractors under Class-IV and III categories domiciled within the territorial jurisdiction of the assembly constituency would alone be entitled to execute the work, the cost of which is above Rs. 50,00,000/- and upto Rs. 1,00,00,000/-. Since the petitioner had failed to submit any documentary proof of his residency within the said Assembly Constituency, hence, the authorities have rightly rejected his bid on technical ground as well. The bid of the petitioner having been rejected both on technical as well as financial

ground, for valid reasons, the petitioner does not have any right that can be enforced in this petition.

7. The State respondents have not filed any affidavit but the learned Govt. Advocate has produced the record connected with the tender process.

8. By referring to the pleadings contained in the writ petition, Mr. Kato, learned counsel for the petitioner submits that the Act of 2015 does not make it mandatory to produce EPIC as proof of residency within a particular Assembly Constituency. The petitioner had submitted Permanent Resident Certificate along with his bid showing that he is a domicile of Gamin Nagar, Aalo in the West Siang district which falls within the Assembly Constituency in question. The mere fact that the name of the petitioner is enrolled in the electoral roll of No. 27-Liromoba Assembly Constituency cannot automatically lead to the conclusion that the petitioner is not a resident of the area falling under 31<sup>st</sup> Aalo Assembly Constituency. By referring to a decision of the Supreme Court in the case of ***Union of India Vs. Dudh Nath Prasad*** reported in ***(2000) 2 SCC 20***, Mr. Kato submits that the term domicile means the place where a man has his home and the entry of his name in the electoral roll of another constituency cannot negate the fact that the petitioner was a domicile of the place indicated in his Permanent Resident Certificate. Mr. Kato has further submitted that Clause- 3 of the NIT is a directory clause but the same has been applied in an arbitrary manner by the authorities by construing the clause as a mandatory, which had resulted into

injury to the interest of the writ petitioner. In support of his aforementioned argument, Mr. Kato has placed reliance in the cases ***Ajit Das Vs. The State of Assam & Ors.*** reported in ***2001 (1) GLT 440*** and ***Poddar Steel Corporation Vs. Ganesh Engineering Works*** reported in ***(1991) 3 SCC 273***. By placing reliance upon another decision of this Court rendered in the case of (***Susil Malo Das Vs. The State of Assam & Ors.***) reported in ***2009 (4) GLT 785***, Mr. Kato, therefore, submits that non-submission of the EPIC cannot be the sole criteria for rejecting the bid of the writ petitioner.

9. Mr. Kato has further contended that while evaluating the bid submitted by the tenderers, the authorities are required to act in a fair and transparent manner, taking decision which are free from arbitrariness. In the present case, the bid submitted by the respondent No. 7 itself was defective since he had failed to affix proper stamp value in the affidavit furnished in support of declaration made by the respondent No. 7. That apart, submits Mr. Kato, the vehicle lease agreement produced by the respondent No. 7 were also completely bogus and fictitious inasmuch as the lease rent shown for hiring trucks and tractors are completely unrealistic when compared with the present market price of the same. Therefore, submits Mr. Kato, the decision to accept the tender of the private respondent by ignoring such deficiency was wholly arbitrary and a clear act of favouritism. The learned counsel further submits that since the bid of the petitioner was rejected on a technical ground, viz. non-submission of the EPIC, hence, the respondents could not have opened the price bid of the petitioner. In such view of the

matter the present, according to Mr. Kato, is a clear case where the authorities have accepted the single tender of the respondent No. 7 and awarded the work in violation of the CVC guidelines.

10. In support of his aforementioned argument, Mr. Kato has referred to the following decisions:

- a) 2014 (4) GLT 71 (National Constructions (M/s) Vs. The State of Nagaland & Ors.)
- b) 2004 (3) GLT 187 (Muzzamel Haque Vs. The State of Assam & Ors.)
- c) (2012) 8 SCC 216 (M/s. Michigan Rubber (India) Ltd. Vs. State of Karnataka & Ors.)
- d) (2012) 3 SCC 1 (Centre for Public Interest Litigation and Ors. Vs. Union of India and Ors.)
- e) (1997) 3 SCC 486 (Fag Precision Bearings Vs. Sales Tax Officer (I) & Anr.)
- f) 2005 (4) GLT 715 (Lila Borah Vs. The State of Assam & Ors.)

11. Resisting the aforesaid arguments, Mr. R. Saikia, learned counsel appearing for the respondent No. 7, at the very outset, has questioned the maintainability of the writ petition on the ground that the petitioner has not challenged the LOI issued in favour of the respondent No. 7 but has merely confined the challenged to the approval issued by the respondent No. 5 for accepting the petitioner's bid. He submits that the requirement of submitting the EPIC being mentioned in the NIT itself, the petitioner was aware of the same before submitting his bids. Since the petitioner did not fulfil the said requirement, his bid has been rightly rejected on the ground of technical deficiency. Mr. Saikia further submits that the contention raised by the

petitioner that his bid has been rejected only on technical ground stands falsified from a bare perusal of the Comparative Statement(CS) of financial bids which goes to show that the price bid of the petitioner was also found to be unacceptable under the CPW manual and therefore, was rightly rejected by the respondents.

12. By producing a copy of the work completion certificate dated 15-10-2016 issued by the respondent No. 5, Mr. Saikia submits that since there was no interim order passed in this case, hence, the respondent No. 7 has not only completed the work to the satisfaction of the authorities but has also received the entire payment due under the contract. In such view of the matter submits Mr. Saikia, there is no scope for granting any relief to the petitioner in the present case.

13. I have considered the rival submission made at the bar and have also perused the records produced by the learned Govt. counsel. It is not in dispute that the NIT itself had clearly mentioned that the provision of the Act of 2015 shall be applicable and that the bidders would have to produce the Permanent Resident Certificate and EPIC, duly issued by the competent authorities, as a proof of residence in the Assembly Constituency. The Arunachal Pradesh Legislative Assembly had enacted the Act of 2015 with the object of providing incentive to ensure greater participation by district bases entrepreneurs and professionals as a part of Government policy so as to facilitate the decentralisation of development activities with greater

participation of people from the nooks and corners of the state. Section 2(b) of the Act of 2015 defines a "District Based Entrepreneurs and Professionals" which reads as follows:-

*"2(b). "District Based Entrepreneurs and Professionals" means and includes any person who is involved in activity of execution of Development and Welfare project of the Government and includes Architect, Engineers, Contractors, Doctors etc. but does not include any government official. The person must be local having Arunachal Pradesh domiciled certificate and is a permanent resident of the District."*

14. Section 3 of the said act categorically provides that preference to be given by the Government to the district based entrepreneurs and professionals in its development and welfare oriented projects and for such purpose, the Government may lay down norms for effective implementation of promotional schemes. In order to give effect to Section 3(1) a schedule has been framed lying down the cost of work *vis-a-vis* eligibility of the contractors. Clause-2 of the schedule deals with eligibility norms of the contractors for executing work valued above Rs. 50,00,000/- up to Rs. 1,00,00,000/-. As per the said schedule, all registered contractors in Class-III and IV categories domiciled within the territorial jurisdiction of the assembly constituency shall alone be eligible. The clear intent to give effect to the provision of the Act is borne out from a reading of Clause- 18 of the NIT which reads as follows:

*"18. Eligibility:- All registered contractors in Class- III & IV Category domiciled within the territorial jurisdiction of assembly constituency."*

15. It is, thus, clear that Clause- 3 has been inserted in the NIT with the clear objective of giving effect to the provisions of Act of 2015 and according to the respondents the EPIC was an acceptable means of ascertaining as to whether a bidder is domiciled in the particular Assembly Constituency. Having regard to the solemn object of the Act of 2015, the Clause- 3 of the NIT has a clear nexus with the object of the Act of 2015 and hence, Clause- 3 cannot be termed as unreasonable. Both the petitioner and the respondent No. 7 are claiming benefit under the Act of 2015 but the writ petitioner has admittedly not submitted any proof of his domicile within the Assembly Constituency as per the NIT condition. Rather, materials before the authorities indicated that he was an elector from another Assembly Constituency. Even the Permanent Resident Certificate produced by the petitioner did not mention the Assembly Constituency.

16. By referring to Clause- 7 of the NIT, although an argument has been advanced by the petitioner's counsel that registered contractors from other states were also allowed to participate in the bidding process, but I find that the said clause operates in a completely different sphere, inasmuch as the bidders from other states, not registered with the Arunachal Pradesh PWD would have to fulfil certain other eligibility requirement mentioned therein, so as to participate in the tender process. The petitioner is certainly not claiming benefit of Clause- 7 and therefore, the said contention does not merit acceptance by this Court.

17. In the present case, it is the admitted position of fact that the petitioner had submitted his bid after going through and understanding the conditions contained in the NIT and being aware of the fact that he does not fulfil Clause- 3 of the said NIT. Neither the Act of 2015 is under challenge nor has the petitioner challenged the NIT. Having submitted his bid with full knowledge and understanding that he did not fulfil the tender conditions, the petitioner cannot be permitted to question the legality and validity of a particular clause in the NIT at this distant point of time.

18. As regards the plea taken by the petitioner regarding insistence on the EPIC, from the record, I find that despite non-furnishing of the EPIC, the respondent No. 5 had made enquiries with the relevant authorities so as to ascertain whether the petitioner is domiciled in the particular Assembly Constituency. Such enquiry revealed that his name was enrolled in the electoral roll of a different Assembly Constituency, i.e. No. 27-Liromoba Assembly Constituency. No voter can legitimately claim to have his name entered in the electoral roll of two different constituencies. If that be so, the petitioner was clearly under an obligation to submit proof of his domicile within the limits of the 31<sup>st</sup> Aalo Assembly Constituency, which was a mandatory condition of the NIT, which he has failed to provide.

19. Coming to the issue of price bid quoted by both the tenderers, as mentioned above, the estimated cost of the work was Rs. 72,50,000/-. The writ petitioner had quoted Rs. 60,89,535/- whereas the respondent No. 7

had quoted Rs. 60,86,312/-. By applying simple arithmetic, the price quoted by the petitioner turns out to be 16% below the estimated cost whereas the price of the respondent No. 7 is found to be 5% below the estimated cost. Clause- 20.4.3.2 of the CPWD Works Manual, 2014 provides as follows:

*"20.4.3.2. Acceptance of tenders at justified rates with allowable variations*

*Apropos provisions under para 20.4.3 variation up to 5% over the justified rates may be ignored. Variation up to 10% may be allowed for peculiar situations and in special circumstances. Reasons for doing so shall be placed on record. Tenders above this limit should not be accepted."*

20. Taking note of the aforesaid clause contained in the CPWD Manual the respondent authorities found the price bid of the petitioner to be unacceptable as the same was 16% below and on such basis, the price bid of the petitioner was also rejected. Therefore, it is not a case where the petitioners bid was rejected merely on technical considerations.

21. Although, Mr. Kato has vehemently argued that it a case of single tender and therefore, the respondent could not have awarded the work to the respondent No. 7, I am unable to agree with the said submission of the petitioner's counsel for the reasons noted above. It is apparent from the record that the price bid of the petitioner was opened and his tender was rejected on the ground of non-acceptability of the price bid, the same being 16% below the estimated cost.

22. In the case of *Michigan Rubber (Supra)* the Hon'ble Supreme Court has held that while assessing a tender some latitude is required to be given

to the authority. The defects pointed out by the petitioner in the bid submitted by the respondent No. 7 in the opinion of this Court are trivial in nature, not having any substantive bearing on the execution of the work. Moreover, since the work has already completed to the satisfaction of the authorities, the aforesaid issues do not survive for adjudication by this Court at this point of time.

23. The law regarding exercise of power of judicial review in tender matters is firmly settled. In the matter of Government tenders, the court is required to examine the decision making process so as to satisfy itself that the process adopted by the authorities in evaluating the bids is free from arbitrariness and unfairness. In the case of ***Maa Binda Express Carrier & Anr. Vs. N.F. Railways & Ors.*** reported in ***(2014) 3 SCC 760***, the Supreme Court has observed that in a Government tender, all the participating bidders are entitled to a fair, equal and non-discriminatory treatment in the matter of evaluation of their bids. Again in the case of ***Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation & Ors.*** reported in ***(2000) 5 SCC 287***, the Supreme Court has observed that the Government is free to enter into any contract with the citizen but the court may interfere when it acts arbitrarily or contrary to public interest.

24. In the case in hand, the writ petitioner had admittedly failed to submit the vital document as per Clause- 3 of the NIT. Therefore, his bid was

technically non-compliant. If the petitioner was in any way aggrieved by Clause- 2 and 3 of the NIT, he could have availed legal remedy at the appropriate time, i.e. before submission of the bids, which he did not do. Further, the respondents found his price bid also to be unacceptable. As noted above, the respondent No. 7 has already executed the work and therefore, the public interest has not suffered in any manner in the present case. Once the bid submitted by the petitioner is found to have been rejected for valid reasons, no relief can be granted to the petitioner in the present writ petition. Therefore, the decisions cited by the petitioner's counsel will be of no assistance to him in the facts and circumstances of the present case.

25. For the reasons stated hereinabove, I am of the considered opinion that the writ petitioner has failed to make out a case meriting interference by this Court. The writ petition is therefore, held to be devoid of any merit and the same is accordingly dismissed.

Send back the records.

No order as to cost.

**JUDGE**

GS