

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

ITANAGAR PERMANENT BENCH

WP (C) 147 (AP) 2017

**M/s Global Enterprise, represented by its Power of Attorney Holder
Shri Kenli Lollen, S/o Lt. Geken Lollen, R/o Kombo Papak, P.O./P.S-
Aalo, West Siang District, Arunachal Pradesh.**

...Petitioner.

-Vs-

1. *The State of Arunachal Pradesh, represented by the Secretary, Commissioner, RWD, Govt. of Arunachal Pradesh, Itanagar.*
2. *The Chief Engineer, RWD, Govt. of Arunachal Pradesh, Itanagar.*
3. *The Superintending Engineer, Rural Works Circle, Pasighat, East Siang District, Arunachal Pradesh.*
4. *The Chairman, Tender Board/ Committee represented by Superintending Engineer, Rural Works Circle, Pasighat, East Siang District, Arunachal Pradesh.*
5. *The Executive Engineer, RWD Division, Aalo, P.O/P.S-Aalo, West Siang District, Arunachal Pradesh.*
6. *M/s D. B. Enterprises, represented by its Proprietor Shri Idak Bagra, R/o Upper Colony, Aalo, West Siang District, Arunachal Pradesh.*

.....Respondents.

For the petitioner	:	Mr. K. Lollen, Advocate.
For the respondents	:	Mr. R. H. Nabam, Addl. Advocate General, Mr. M. Kato, for private respondent No. 6.
Date of hearing	:	27.06.2017.
Date of Judgment and Order	:	07.07.2017.

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

JUDGMENT & ORDER (CAV)

(Ajit Borthakur, J.)

Heard Mr. K. Lollen, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Additional Advocate General appearing for the State and Mr. M. Kato, learned counsel for the private respondent No. 6.

2]. By this application under Article 226 of the Constitution of India, the petitioner, who is the duly constituted Power of Attorney holder of M/s Global Enterprises, has challenged the illegal and arbitrary Memorandum vide No. RWD-P/ SPA/SIDF (Tender)-03/ Aalo/ 2016-17, dated 06.02.2017, whereby the respondent authority more particularly respondent Nos. 3, 4 & 5 cancelled the tender floated vide NIT No. EEA/ RWD (SPA)/ NIT-14/2015-16, dated 22.12.2016, for the work "C/O Male and Female Ward at District Hospital, Aalo", after opening and admitted the technical bid of the petitioner on 11.01.2017, without assigning any reason. The petitioner has also challenged the subsequent press Notice/ NIT vide No. EEA/ RWD (SPA/SIDF)/ NIT-16/2015-16, dated 13.02.2017, whereby the respondent No. 5, after cancelling the earlier NIT, dated 22.12.2016, re-invited tenders from approved and registered contractors, firms from Aalo East Constituency and adjoining constituency of Aalo West and Basar Constituency for the works:- 1. "Construction of Approach Road from VKV School Main Gate to Jirdin Bulu Area" and 2. C/o Male and Female Ward at District Hospital, Aalo" without giving wide publication in the local newspapers and without displaying in the office Notice Board, in violation of Section 17 of the CPWD Manual, 2014. The petitioner has further challenged the opening of technical bid and financial bids, on 13.02.2017, by the Tender Committee, whereby the bid of the respondent No. 6, despite being a registered Class-1 Contractor was not eligible for the tender work of Rs. 191.30 Lakhs in terms of "The Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentive, Development and Promotional) Act, 2015, was accepted and accordingly entered into an agreement for "C/O Male and Female Ward at District Hospital, Aalo".

3]. Mr. R. H. Nabam, learned Additional Advocate General, Arunachal Pradesh, appearing on behalf of the State respondent Nos. 1 to 5 and respondent No. 5 in his affidavit-in-opposition, *inter alia*, submitted that tender process as per CPWD Manual was strictly followed and accordingly, the petitioner's single bid was not accepted and the Tender Committee recommended for retender call. According to Mr. Nabam, learned Additional

Advocate General, the petitioner was not eligible to participate in further tender as per Section 4 (e) of The Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentive, Development and Promotional) Act, 2015 vide notification No. SPWD/W-66/2012, dated 13.08.2015, as the petitioner was already executing more than two works as per reports received from other departmentS during technical bid evaluation period. Mr. Nabam has further submitted that the respondent No.6—a firm is both a Class-I and Class-II registered contractor in State APWD and State Bank of India respectively and no Class-I registration was enclosed in the technical bid. Mr. Nabam also submitted that after cancellation of 1st Tender, retender was done vide NIT No. EEA/ RWD/ SPA/NIT-14/ 2015-16, dated 13.02.2017 and published in the State daily, 'Arunachal Age' and three bidders including the respondent No. 6 participated in the process and having found the respondent No. 6 responsive in both technical and financial bids, the work was awarded accordingly being the lowest bidder, which has already resumed its execution work.

4]. The respondent No. 6- a firm, in affidavit-in-opposition and Mr. M. Kato, learned counsel appearing on its behalf, *inter alia*, submitted that as the petitioner was the single bidder in the aforesaid first tender process, the same was cancelled by the respondent department vide Memorandum, dated 06.02.2017, as per the CVC guidelines and circular issued by the Government in this behalf from time to time. Mr. Kato submitted that thereafter, the respondent No. 5 issued NIT afresh on 13.02.2017 for the aforesaid work, which was widely published in a local daily viz. 'The Arunachal Age' in response whereto 3 (three) firms including the respondent No. 6 participated in the tender process. The Tender Committee having found the respondent No. 6 responsive in technical and financial bids and L-1 awarded the Contract in its favour. Accordingly, Mr. Kato submitted that the respondent No. 6 has already resumed execution of the work after doing necessary formalities such as execution of agreement, dated 03.03.2017. That apart, the petitioner has no *locus-standi* to invoke the writ jurisdiction of this Court inasmuch as, the petitioner cannot claim for award of the Contract work as a matter of right, as

he had not participated in the tender process in the subsequent NIT, dated 13.02.2017. Mr. M. Kato, learned counsel, further submitted that the respondent No. 6 being a registered Class-III contractor empanelled in the State Bank of India was an eligible firm to participate in the tender process and being turned out to be L-1 bidder, awarded with the contract. On the other hand, Mr. Kato submitted that since there was no other bidder or responsive bidder, domiciled within the territorial jurisdiction of the Assembly Constituency, the bid of respondent No. 6 was accepted by virtue of Clause 4 (ii) (f) of The Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentive, Development and Promotional) Act, 2015.

5]. On perusal of the pleadings of both the sides, it is revealed that there is no dispute that in response to the NIT vide No. EEA/ RWD (SPA)/ NIT-14/2015-16, dated 22.12.2016, issued by the respondent No. 5-The Executive Engineer, RWD Division, Aalo, Arunachal Pradesh for the work " C/O Male and Female Ward at District Hospital, Aalo" vide Annexure-III, the Petitioner-firm-a registered Class-III contractor and domicile of Aalo Assembly Constituency being eligible participated in the bidding process in the aforesaid work involving tender cost of Rs.191.30 lakhs. Two bidders viz. the petitioner and another M/S D.P. Enterprises offered tender and on opening the technical bid on 11.01.2017 by the Committee, the petitioner-firm was only found to be responsive and hence, admitted for technical bid evaluation. However, the respondent No. 3-the Superintending Engineer, Rural Works Circle, Pasighat, Arunachal Pradesh issued a Memorandum, dated 06.02.2017 (Annexure-V), whereby it was simply stated that the tender floated vide NIT No. EEA/ RWD (SPA)/ NIT-14/2015-16, dated 22.12.2016, stood cancelled. Although no reason for cancellation of the aforementioned tender was cancelled, the cancellation as stated in the affidavit-in-opposition by the respondents was for the implied sole reason that as per CVC guidelines and Circulars issued by the Government from time to time, the single bidder in the tender process was not accepted. Therefore, no illegality is noticed on the part of the respondent No. 3, while cancelling the first NIT aforementioned with intimation to the petitioner vide Annexure-VI issued by the respondent No. 5 paving the way

for issuance of a second NIT vide No. EEA/ RWD (SPA/ SIDF)/NIT-16/ 2015-16, dated 13.02.2017 vide Annexure-VII.

6]. The aforesaid second NIT for the work was admittedly published in a local daily viz. 'The Arunachal Age' in the form of a Press Notice, dated 13.02.2017 and in response thereto, three bidders viz. (1) the respondent No. 6-M/S D. B. Enterprises, Aalo, West Siang District, Arunachal Pradesh, (2) M/S D. T. Construction House, Basar, West Siang District, Arunachal Pradesh, (3) M/S Nill Enterprises, Mechuka, West Siang District, Arunachal Pradesh participated in the tender process. The technical evaluation was done on 28.01.2017 and the Committee found M/s D. T. Construction House and M/s D. B. Enterprises, that is, the respondent No. 6 responsive and accordingly, the aforesaid two firms were recommended for financial bid opening vide Annexure-IX, which took place on 01.03.2017. The minutes of financial bid opening vide Annexure-IX shows marginal difference in bids and respondent No. 6-firm having found to be the L-1, the Committee recommended the respondent No. 6 for award of work, which was duly communicated by the respondent No. 5-the Executive Engineer, RWD, Aalo on 03.03.2017 after due approval of the respondent No. 3-the Superintending Engineer, RWC, Pasighat vide Annexure-X. It is noticed that on the aforesaid same day, agreement vide Annexure-XI was executed between the respondent No. 5 and respondent No. 6 on 03.03.2017 and immediately, thereafter, on the same day, Notice to proceed with the work vide Annexure-XI was issued to the respondent No. 6. The respondent Nos. 5 & 6 in their affidavits-in-opposition have averred that after getting the work order, the respondent No. 6 has invested huge capital and employed men and machineries for execution of the work at the work site and started work, but suspended after receipt of Court order, dated 23.03.2017.

7]. Based on the affidavit-in-opposition, it appears that the respondent No. 6 being a Class-I contractor of State Bank of India and Class-III contractor of APPWD respectively, although no copy of such eligibility document showing fulfilment of criteria is annexed thereto as per requirement

of the provisions in "The Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentive, Development and Promotional) Act, 2015 and Rule 4 of the Rules made thereunder for the tender cost of Rs.191.30 lakhs. The respondent No. 6 has also fulfilled the criteria of domicile within the territorial jurisdiction of Aalo Assembly Constituency, where the tender work is supposed to be executed and accordingly, the NIT was given publicity as per requirement of Section 17 (1) (1) of the CPWD Manual, admittedly by way of publishing the NIT afresh, dated 13.02.2017, in the State daily viz. 'The Arunachal Age'.

8]. Section 4 (e) of The Arunachal Pradesh District Based Entrepreneurs and Professionals (Incentive, Development and Promotional) Act, 2015, the petitioner having done 2 (two) works in hand in different departments of the State was not eligible to participate in the tender process vide Annexures –II, III, IV & V. Therefore, being not eligible to participate in the tender process, the petitioner in all probability stayed away from participation in the tender process and thereby has lost its *locus-standi* to invoke the writ jurisdiction of this Court to challenge the award of the contract in favour of the respondent No. 6-the firm as the petitioner cannot be said to be the 'aggrieved person'. In *Jasbhai Motibhai Desai-vs- Toshan Kumar & Ors.*, reported in AIR 1976 SC 578, the Apex Court held that to have *locus-standi* in invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India, the applicant should ordinarily be one, who has a personal or individual right in the subject matter. This view was followed in a catena of judgments of this Court too such as in *Lokam Brothers & Ors-vs- State of Arunachal Pradesh & Ors.*, reported in 2015 (5) GLR 147.

9]. The petitioner in rejoinder affidavit and Mr. K. Lollen, learned counsel for the petitioner raised certain allegations, which have come to light after filing of the instant petition, such as forgery of registration documents, insurance documents relating to an Excavator, shown to be of his firm and accordingly, had sworn a false affidavit before the Magistrate by the respondent No. 6 and that the contract was awarded violating all codal formalities of tender process. Here, it is to be born in mind that Article 226 of the Constitution of India, provides equitable and extra-ordinary powers to the

High Court to correct a manifest error or malafide administrative decision and to exercise the powers for the sake of justice. Therefore, the High Court while exercising the writ jurisdiction does not act as a Court of appeal or substitute for the ordinary remedies available in law enabling it to decide disputed questions of fact. It is seen that the petitioner-firm has filed representation to the respondent No. 5 and also an FIR before the Officer-in-Charge, Aalo P.S. highlighting the criminal acts allegedly committed by the respondent No. 6-firm while submitting the bids in the tender process with a legitimate expectation that those allegations be fairly enquired/ investigated in public interest by the concerned authorities and initiate appropriate legal action in due course of law.

10]. As no arbitrary or irrational decision making process is notice in course of evaluating the tenders and award of the contract to the respondent No. 6, as stated above, this Court is of the opinion that no interference under Article 226 of the Constitution of India is called for.

11]. In view of the above, **this writ petition stands dismissed. No cost.**

Interim order, if any, stands automatically vacated.

JUDGE

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