

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

1. W.A. 05(AP) of 2019

1. The State of Arunachal Pradesh, represented by Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Secretary, Public Works Department, Govt. of Arunachal Pradesh, Itanagar.
3. The Tender Evaluation Committee, headed by its Chairman.
4. The Executive Engineer, Public Works Department, Nari Division, East Siang District, Arunachal Pradesh.
5. M/s Bom Enterprises, represented by its Proprietor Shri Tubom Koyu, Village Rotte, P/O-Koyu, P/S Nari, East Siang District, Arunachal Pradesh.

Appellants.

– VERSUS –

Smti. Miti Nyiyang Kakki, W/o Tajum Kakki, permanent resident of Village Sipu, PO-Koyu & P.S- Ruksin, East Siang District, Arunachal Pradesh.

..... Respondent.

2. WA.06(AP) of 2019

Smti. Miti Nyiyang Kakki, W/o Tajum Kakki, permanent resident of Village Sipu, PO-Koyu & P.S- Ruksin, East Siang District, Arunachal Pradesh.

.....Appellant

– VERSUS –

1. The State of Arunachal Pradesh, represented by Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Secretary, Public Works Department, Govt. of Arunachal Pradesh, Itanagar.
3. The Tender Evaluation Committee, headed by its Chairman.
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5. M/s Bom Enterprises, represented by its Proprietor Shri Tubom Koyu, Village Rotte, P/O-Koyu, P/S Nari, East Siang District, Arunachal Pradesh.

..... Respondents.

Advocate for the Appellants: Mr. S. Tapin, Govt. Advocate

Advocate for the Respondents: Mr. T. Tagum
Mr. N. Ratan

:::BEFORE:::

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

HON'BLE MR JUSTICE AJIT BORTHAKUR

Date of Hearing : 11.09.2019
Date of Judgment : 11.09.2019.

JUDGMENT AND ORDER

(A. Borthakur, J)

Heard Mr. S. Tapin, learned Senior Govt. Advocate appearing for the appellants in W.A. No. 05(AP)2019 and for the respondents in W.A No.06(AP)2019. Also heard Mr. T. Tagum, learned counsel appearing for the appellants in W.A. No. 06 (AP)2019 as well as Mr. N. Ratan, learned counsel for the private respondent.

2. The above two Inter-Court appeals are preferred against the impugned judgment and order, dated 19.03.2019, passed by the learned Single Judge, in WP(C) No.506(AP)2018.

3. The grievance of the private respondent/writ petitioner namely, Smti. Miti Nyigang Kakki/respondent herein is that she had participated in the tender process for the work "*C/o widening, Retaining wall, culvert at various points on N.E.C road within Sipak stream to Kora under SIDF in East Siang District of Arunachal Pradesh, package No.SPWD/PE-03/BLC/SIDF/2017-18/727, dated 19.02.2018*" fulfilling all criteria. However, the private respondent namely, M/s Bom Enterprises/appellant in W.A. No. 06(AP)2019 was declared as L-1 despite there being non-fulfillment of the essential terms and conditions in the Notice Inviting Tender (NIT), dated 15.03.2018.

4. By the impugned judgment and order, dated 19.02.2019, passed in WP(C) No. 506(AP) of 2018 had quashed and set aside the award of the tender made in favour of the said private respondent and further, directed the respondents/State to consider the tender of the writ petitioner for the said work with an observation that the writ petitioner is only eligible tenderer as per the NIT.

5. The instant Inter-Court appeals are preferred against the said impugned judgment and order, on the grounds, *inter alia*, that the learned single Judge failed to appreciate the issues including the facts that the 80% of the work has already been completed and that the writ petitioner himself is not eligible for the award as per Section 20.4.3.2 of the CPWD Manual.

6. The learned counsel for the appellants submits that in view of the grounds cited above in the appeals, the learned single Judge's impugned judgment and order suffers from patent illegality and contrary to the balance of

convenience and further, the same cannot be legally given effect to and as such, the private respondent's case is infructuous.

7. Mr. N. Ratan, learned counsel for the private respondent fairly admits the above submission made by the learned counsel for the appellants and further submits that due to this reason, the matter has become infructuous.

8. Having considered the above submissions made by the learned counsel for both sides and without going into the merit of the impugned judgment and order passed by the learned single Judge, the appeals are allowed, setting aside and quashing the impugned judgment and order, dated 19.02.2019 passed in WP(C) No. 506 (AP) of 2018 being infructuous/unnecessary.

Accordingly, the appeals are **disposed of**.

JUDGE

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