

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

**WP(C) 430 (AP)/2018**

M/s Sports India Construction Company

..... *petitioner*

**-Vs-**

The State of Arunachal Pradesh & 4 Ors.

..... *Respondent*

**By Advocates:**

Mr. R. Sonar,  
Mr. L. Tapa,  
Ms. T. Devi,  
T. Rukku,  
K. Diyum,  
G. Jini

..... *For the petitioner*

Mr. S. Tapin, learned Senior Government Advocate

..... *for the State respondents*

Mr. N. Ratan,

..... *For the respondent No. 5*

Date of hearing : **09.01.2019**

Date of judgment : **10.01.2019**

**BEFORE  
HON'BLE MR. JUSTICE NANI TAGIA  
JUDGMENT & ORDER**

Heard Mr. R. Sonar, learned counsel for the petitioner and Mr. S. Tapin, learned Senior Government Advocate appearing for State respondents as well as Mr. N. Ratan, learned counsel appearing for respondent No. 5.

**2.** The petitioner is a firm in the name and style of M/s Sports India Construction Company, registered under the Arunachal Pradesh Enlistment of Contractors in Works Department, Rules 2008, bearing Registration No. CEAP(D&P)/PLG-48/2009-10/I/91, issued vide No. CEAP(D&P)PLG-48/2009-10/1097/1116, dated 29.07.2009. The petitioner's case is that Sri Sama Dodum, who is the sole proprietor of the petitioner firm, came across the Office order dated 27.08.2018, published in the newspaper 'The Arunachal Times' dated 28.08.2018, wherein it was stated that in compliance of Court Order No:- Dir/Lit/AP/2018/661, dated 10.07.2018 from the Gauhati High Court, Itanagar Permanent Bench of WP(C)No. 37 (AP)/2018, the NIT called vide No. CD/DRG-2/2017-18/558, dated 10.01.2018 and CD/DRG-02/2017-18/613, dated 03.02.2018 in respect of the project "C/o roads & bridges from Domdila village via Killo, Chayangtajo circle, East Kameng District under RIDF-XXII" the receipt of tender documents & opening of tender is fixed on 04.09.2018 at 1:00 PM & 1:30 PM respectively at the office of the undersigned. After he came across this Office Order in the newspaper Arunachal times, he approached the Executive Engineer, Chayangtajo Division, asking the Executive Engineer to allow him to participate in the tender proceeding mentioned in the Office Order dated 27.08.2018. However, the petitioner was denied participation in the tender process mentioned in the order dated 27.08.2018 on the ground that works in question was put to NIT as far back as on 10.01.2018, fixing the last date for purchase of tender paper on 22.01.2018 and last date of submitting the bid on 05.02.2018. As the dates for participation had already been over, therefore, the petitioner was not allowed to participate in the tender process even though it was notified vide Office Order dated 27.08.2018 and published in the 'The Arunachal Times' on 28.08.2018.

**3.** The further case of the petitioner is that since the original NIT dated 10.01.2018, had not been widely published in the State and therefore, he was unaware of any such notice being issued for the construction of the work mentioned therein. He could only come to know of the works mentioned therein through the Office Order dated 27.08.2018 which was published in the 'The Arunachal Times', dated 28.08.2018 and non publication of the NIT in the widely circulated newspapers such as the 'Arunachal Times' or 'Arunachal Front' or other

mode of publication, has denied him the opportunity of participating in the said tender process and therefore, the writ petitioner prays that the NIT dated 10.01.2018 as well as the Office order dated 27.08.2018, issued by the Executive Engineer, Chayangtajo Division, be set aside and further direct the respondents to issue a fresh tender of the work to be executed so as to enable all other eligible participants to take part in the tender process.

4. Resisting the case of the petitioner, an affidavit-in-opposition has been filed by the respondent Nos. 2 & 3. In the said affidavit, the respondent Nos. 2 & 3 have stated that the NIT dated 10.01.2018 was widely published in the local newspapers called the 'Arunachal Age' and also in the National newspaper call 'The Hindu' on 14.01.2018. The respondents also stated in their affidavit that publication in the 'Arunachal Age' was made on the basis of the roster discretion maintained by the IPR Department, over which respondent No. 2 & 3 had no control over in which ever newspaper it is to be published. And it further states that Office Order dated 27.08.2018, was issued in continuation of the NIT dated 10.01.2018, so as to enable the intended bidders who had submitted their bids/tender paper on or before 05.02.2018. Therefore, no other bidder could have been allowed to purchase the tender documents as the last date for purchase was already over on 21.01.2018 at 1:00 pm and that is the reason why the writ petitioner was denied participation in the tender process.

5. Respondent No. 4, who is also the State respondents has supplemented the contention made by the respondent No. 2 & 3, by filling a separate affidavit, wherein it is stated that as per the existing policy of Advertisement, the Department of IPR, is mandated to release the Government Advertisement as per the consent, requirement and instructions of the Executing Agency. The Department of IPR, *suo moto* cannot issue NIT and advertisement beyond the requirement of the Executing Agency. As such the aforesaid NIT was published on 14.01.2018 in the local daily, 'The Arunachal Age' as per the roster point of newspaper in alphabetical order maintained by the Department of IPR. Further, the said NIT was also published in the National Newspaper called 'The Hindu' as per the requisition and instruction of the Executing Agency for publishing it in one local and one national daily.

6. The private respondent No. 5 has also contested the matter by filing the affidavit whereby, it has been contended that respondent No. 5 has participated in the tender process and submitted its bid in terms of the Office Order dated 27.08.2018, issued by the Executive Engineer, Chayangtajo Division, after having purchased the tender paper long back in pursuance of original NIT dated 10.01.2018 and therefore, respondent No. 5 contends that if the respondent No. 5, could come to know about the NIT dated 10.01.2018, published in the 'Arunachal Age' as well as in 'The Hindu', the writ petitioner also could have known about the related tender proceeding. The writ petitioner having remained unaware cannot complain of any violation of the rights etc.

7. Mr. R. Sonar, learned counsel for the petitioner by referring to the statements made in paragraph 9 (nine) of the writ petition submits that 'The Arunachal Times' and the 'Arunachal Front' are the two most widely circulated local newspapers in the Capital Complex as well as throughout the State of Arunachal Pradesh. By not publishing the related NIT in the said two newspapers, the respondents have deprived the writ petitioner as well as many others, who could have participated in the said Tender Process had the related NIT been published in 'The Arunachal Times' as well as in the 'Arunachal Front' papers, which has a wide circulation. He further submits that in the original NIT, dated 10.01.2018, issued by the Executive Engineer, Chayangtajo Division, PWD, in serial No. 3 (three) of the information section of the said NIT it has been mentioned that the Director, IPR, Arunachal Pradesh (respondent No. 4) was requested to publish the said NIT/press notice in 2 (two) local dailies and in 1 (one) National Newspapers on or before 14.01.2018. At serial No. 11 (eleven) of the same section, it has also been marked to the In-charge of IT Center, Eastern Zone, PWD [www.arunachal.pwd.org](http://www.arunachal.pwd.org) to hoist/publish in the official web site of the Arunachal Pradesh, PWD. But neither it was published in the two local newspapers of the Arunachal Pradesh nor it was uploaded in the official web site of the PWD, Department, for which reason many eligible bidders including the writ petitioner have not been able to participate in the said tender process, despite prescription in the NIT or press release dated 10.01.2018, for publication of the NIT in two local newspapers as well as for uploading the NIT in the official web site of the APPWD. The State respondents have chosen the 'Arunachal Age'

and 'The Hindu' for publication of the NIT dated 10.01.2018, in order to unduly favour the private respondent.

**8.** Mr. S. Tapin, learned senior Government Advocate representing the State respondents, by referring to the affidavit-in-opposition filed by the respondent No. 2 has submitted that the NIT dated 10.01.2018, was published in the local paper called 'Arunachal Age' as well as the National paper call 'The Hindu' on 14.01.2018. Both the papers have wide circulation in the Capital Complex of Arunachal Pradesh as well as all over the State and therefore, the contention of the writ petitioner that the related NIT dated 10.01.2018, was not given wide publication resulting in denial of participation of larger participants including the writ petitioner is not correct. Mr. Tapin further submits that the proprietor/writ petitioner being the resident of Capital Complex where both the newspapers are widely circulated, cannot claim that any rights of the petitioner has been violated. Mr. Tapin, also by referring to the counter affidavit filed by the respondent No. 4, submits that the publication of the NIT in the newspaper called 'Arunachal Age' in so far as the local newspaper is concerned, have been made by the Department of IPR in terms of the roster points of newspaper maintained by the Department with respect to the newspapers publish from the State. The NIT dated 10.01.2018, was published on 14.01.2018, in the 'Arunachal Age' by virtue of the roster of the newspaper of the State maintained by the Department of IPR; and, therefore, the respondent No. 2 & 3 had no any hand in getting the advertisement published in the particular newspaper. As per the publication in National Newspaper called 'The Hindu', it was the choice of the IPR, Department/ respondent No. 4, without any instruction whatsoever from respondent No. 2 & 3. In that view of the matter, Mr. S. Tapin submits that there is no any particular choice by the respondent nos. 2 & 3 as regards the publication of the NIT. Whatever was done, was done by the IPR Department and therefore, no any illegality has been committed by the respondent Nos. 2 & 3 so as to deprive the rights of the writ petitioner as well as the other eligible bidders.

**9.** Mr. N. Ratan, learned counsel appearing for the respondent No. 5 submits that he came to know of the NIT dated 10.01.2018 from the publication made in the 'Arunachal Age' and also 'The Hindu' and in pursuance to that he has

participated in the tender process. He further submits that if the respondent No. 5 and others could come to know about the said NIT through 'Arunachal Age' as well as 'The Hindu', there is no any reason why the writ petitioner could not come to know about such publication of the NIT. And accordingly, no rights of the writ petitioner have been violated in the case in hand.

**10.** Rival submissions advanced by the respective counsel for the parties have received due consideration of this Court.

**11.** On perusal of 10.01.2018 NIT/press release, issued by the Executive Engineer, Chayangtajo Division, PWD, Arunachal Pradesh (annexed as annexure 1 series to the affidavit-in-opposition by the respondent No. 2 & 3), while inviting tender for the construction of Road and Bridges from Domdila village to Tajo village via Killo, Chayangtajo Circle, East Kameng District under RIDF-XXII, have amongst other, requested the respondent no. 4, the Director of IPR, Government of Arunachal Pradesh to publish the above press notice in two local dailies and in one National newspaper on or before 14.01.2018, and also to hoist or publish in the official web site of the APPWD. It has remained undisputed from the submissions made at the bar that the press release or NIT dated 10.01.2018, was published only in one local newspaper called the 'Arunachal Age' in contra-distinction to the prescription made by the Executive Engineer, Chayangtajo Division, for publishing it in two local newspaper of the State. In the view of this Court, the request made for publication of the NIT in two local dailies by the Executive Engineer, Chayangtajo Division, had a very loadable object for reaching out the information to as many people as possible so as to enable larger participation in the tender process in the interest of the Department concerned as well as the public. In addition to that it was also directed or prescribed by the same NIT to hoist the related NIT in the official web site of the APPWD, which was also not done in the instant case. Although, the NIT dated 10.01.2018, have been published in 'Arunachal Age' as well as 'The Hindu', non publication in one more local newspaper as well as non hoisting it in the official web site of APPWD, can be reasonably presumed that wider circulation of the information with regard to the NIT dated 10.01.2018, have been substantially curtailed. No any explanation or reasonable justification has come from the

respondents as to why it was it was not published in the two local newspaper and hoist the NIT dated 10.01.2018, in the APPWD web site as well.

**12.** The writ petitioner in paragraph 9 (nine) of the writ petition has stated that 'The Arunachal Times' and the 'Arunachal Front' are the most widely circulated and most popular newspaper in the State. To that statements made by the writ petitioner in paragraph 9 (nine) thereof, neither respondent Nos. 2, 3 & 4 have made a specific denial that 'The Arunachal Times' and the 'Arunachal Front' are not the two most widely circulated newspaper nor respondent No. 5 have made any categorical denial to the submission made by the writ petitioner to that effect.

**13.** In view of such non categorical and specific denial by the respondents, it can be safely presumed that 'The Arunachal Times' and the 'Arunachal Front' are the two most popular and most widely circulated newspaper in the State. The NIT dated 10.01.2018, although, stated to have been published in the 'Arunachal Age' in terms of the roster maintained by the IPR Department, the IPR, Department or for that matter, respondent Nos. 2 & 3, could have chosen to publish it in one more local newspaper, which could have been either 'The Arunachal Times' or the 'Arunachal Front'. The respondents have also chosen not to hoist the NIT in the official web site of APPWD. The omission on the part of the respondents in not publishing in one more local newspaper as well as in not hoisting in the official web site of the APPWD, in terms of their own prescription, in the view of this Court, is not an exercise undertaken in a most transparent and fair manner so as to enable the larger participation of the eligible and intended bidders, including the writ petitioner. Fairness demanded, the respondents ought to have published the NIT in one more local newspaper which is popular and widely circulated in terms of their own prescription in the NIT and press release dated 10.01.2018.

**14.** For the reason and discussion made above, this Court is of the considered opinion that re-tender should be under taken of the work mentioned in the NIT or press release, issued by the Executive Engineer, Chayangtajo Division, PWD, Arunachal Pradesh. Accordingly, the NIT dated 10.01.2018, issued by the Executive Engineer, Chayangtajo Division, PWD, Arunachal Pradesh vide No.

CD/DRG-2/2017/18/558 as well as subsequent Office Order dated 27.08.2018, issued by the Executive Engineer, Chayangtajo Division, vide No. CD/DRG-2/2018-19/140, published in 'The Arunachal Times' on 28.08.2018, are set aside and quashed.

**15.** It is further directed that the respondent No. 1, 2 & 3, shall invite a fresh tender with regard to the works specified in the NIT dated 10.01.2018, issued by the Executive Engineer, Chayangtajo Division, PWD, Arunachal Pradesh vide No. CD/DRG-2/2017/18/558 as well as subsequent Office Order dated 27.08.2018, issued by the Executive Engineer, Chayangtajo Division, vide No. CD/DRG-2/2018-19/140, by publishing the related NIT in at least two local newspapers having wide circulation in the State as well as by hoisting the related NIT in the official web site of APPWD.

The writ petition is **disposed of**, in terms above.

**JUDGE**

*J.Bam*