

THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

WP(C) No.5 (AP)/2013

M/s Yuma Enterprises,
Represented by Shri Techu Hemu,
S/o Sotek Tachang,
Power of Attorney holder of M/s Yuma Enterprises. Petitioner.

-Versus-

1. The State of Arunachal Pradesh through the Chief Secretary,
Government of Arunachal Pradesh, Itanagar.
2. The Secretary,
Water Resources Department,
Government of Arunachal Pradesh, Itanagar.
3. The Chief Engineer cum Employer,
Water Resources Department,
Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
4. The Superintending Engineer,
Water Resources Department,
Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
5. The Assistant Engineer, Water Resources Department,
Sub-Division – Seijosa, East kameng District, Arunachal Pradesh.
6. The Tender Evaluation Committee of tender dated 14.12.2012 for the
Anti Erosion & Flood Protection Work at Seijosa, Dishing Passo, Pakke
Valley, Passa Valley and Papu Valley vide Tender No.
WRSD[IND]/SIA/03/39/2012-13/2012-13/03 represented by its
Chairman, Itanagar, Arunachal Pradesh.
7. M/s Subu Tachang,
Village Kalung Old Ziro,
P.O./P.S – Ziro, Lower Subansiri District, Arunachal Pradesh
(Represented by its Attorney holder Shri Golo Lama and Shri Nabam Sunil)
8. M/s T.K. Construction and Transport Company,
Naharlagun Papum Pare District, Camp : Nirjuli, Arunachal Pradesh,
(Represented by its Attorney holder Shri Bishop Nyari)
9. M/s Tanahali Construction & Company,
C/o "Happy Home", A Sector, P.O. Doimukh, District Papum Pare (A.P.)
(Represented by its Attorney holder Shri Gamja Langlang)
10. M/s ACT Builders,
Represented by its Proprietor Shri Aka Kamdhir Tok)
Head Office & P.O. – Seppa, District East Kameng, Arunachal Pradesh

..... Respondent.

**BEFORE
THE HON'BLE MR. JUSTICE HRISHIKESH ROY**

For the Petitioner : Mr. A. Kashyap,
Mr. D. Lazi. ... Advocate
For the Respondents 1 to 5 : Mr. R.H. Nabam, ... Sr. Government Advocate
For the Respondents 7 to 10 : Mr. S.S. Dey ... Advocate.
Date of Hearing and delivery of Judgment : 2.4.2013

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Kashyap, the learned Counsel appearing for the petitioner. The State respondents are represented by Mr. R.H. Nabam, the learned Senior Government Advocate. Mr. S.S. Dey, appears for the private respondents 7 to 10.

2. The matter pertains to the NIT dated 14.12.2012 issued by the Assistant Engineer, Seijosa Water Resources Sub-Division, East Kameng District whereby tenders were invited for the *Anti-Erosion and Flood Protection Work* for 5 different projects, mentioned in the tender notice. While 29.12.2012 was fixed for last date for receipt of tenders, on 3.1.2013, an *Addendum* pertaining to the contract was published in the newspaper, whereby *Clause 4.2(a)* was modified. This *Clause* relates to the *Power of Attorney Holders* of the tendering parties and it was stipulated that the *Attorney Holder* can't execute the works on behalf of principal and can nominally represent the contractor for non-execution purpose. By the *Addendum* notified on 3.1.2013, the *Attorney Holders* were not debarred to execute the work, on behalf of the Contractors. Here it is relevant to record that sub-contracting under *Clause 7.1* of the ITB was permitted only to the extent of 20% of the work and accordingly it was expected that the Contractors will themselves execute, 80% of the work entrusted to them.

3. The writ petitioner was one of the tenderer but they were declared to be technically "*non-responsive*". Accordingly they pray for *re-evaluation* of the technical bid of all the participating tenderers, including the petitioner.

4. Although several grounds were originally pleaded to challenge the tender process, learned Counsel Mr. A. Kashyap submits that as the *Tender Evaluation*

Committee declared the petitioner to be technically "*non-responsive*" notwithstanding the interim order passed by this Court on 7.1.2013, the petitioner doesn't wish to argue those points and will be satisfied if the technical feasibility of his bid is re-considered by a higher authority.

5. Mr. R.H. Nabam, the learned Senior Government Advocate submits that technical bids of the tenderers were examined on 4th / 5th January, 2013 but the final decision on the technical bids was taken only on 7th January, 2013 and financial bids were opened on the same date. The Government Counsel further submits that the departmental authorities were unaware of the Court's interim order and that is how, the final decision on technical bids was taken and the financial bids were opened.

6. Since the *Addendum* notified on 3.1.2013 enabled execution of work by the *Attorney Holder* of the Contractors, and this *Addendum* was issued after the time for submission of tender was over on 29.12.2012, the petitioner gave representation on 5.1.2013 to the Chairman of the *Tender Evaluation Committee* and other officers of the Water Resources Department. On this representation, the Secretary of the Water Resources Department made an endorsement on 7.1.2013 directing the Chief Engineer to examine and report back, before opening the financial bids.

7. Although it is projected by the State Authorities that a reply was given on the same date i.e. 7.1.2013, there appears to be tearing hurry to complete the tender process. This appears so since the Court's interim order was passed on 7.1.2013 and the Secretary sought report from the Chief Engineer on the same day i.e. 7.1.2013. According to the Senior Government Advocate, a reply was given by the Chief Engineer on 7th January itself and only thereafter, the financial bids were opened on the same very day i.e. on 7.1.2013. Thus too many events conspicuously took place on 7.1.2013 and accordingly the Court feels that the decision making process was deliberately rushed in order to defeat the Courts interim order of 7th January, 2013.

8. Mr. R.H. Nabam submits that the State Authorities are agreeable to have the technical bids of all tenderers *re-evaluated* by superior authority and since this is also the prayer of the petitioner, I feel that such direction can be given. Mr. S.S. Dey, learned Counsel appearing for the private respondents however submits that having regard to the roles played by various authorities, the *re-evaluation* exercise may be carried out through a Committee headed by the Chief Secretary of the State. Mr.

Nabam and Mr. Kashyap are agreeable for re-evaluation of the technical bids by a Committee headed by the Chief Secretary.

9. Having noted the consensus of the parties, the *responsiveness* of the technical bids of the participating tenderers is directed to be *re-evaluated* through a Committee headed by the Chief Secretary, Arunachal Pradesh. Since the Court's interim order has stayed finalization of the tender process and public interest is adversely impacted, the exercise of *re-evaluation* is directed to be completed within 2 weeks from the date of receipt of this order. The Chief Secretary may associate the departmental Secretary and the Chief Engineer during the *de-novo process*. The Court's interim order will then abide by the decision of the Committee.

10. With the aforesaid direction, the case is disposed of. A copy of this order be furnished to Mr. Mr. R.H. Nabam, the learned Senior Government, for necessary communication.

JUDGE

Datta