

**IN THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,**  
**TRIPURA, MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR BENCH**

**WRIT PETITION (C) NO. 498/2010**

Shri Nabam Tagi  
Prem Nagar, Naharlagun  
P.O./P.S.-Naharlagun,  
District – Papum Pate,  
Arunachal Pradesh. ... Petitioner.

**VERSUS**

1. The Union of India,  
Represented by Secretary to the Government of India,  
Ministry of DONER, Vighyan Bhawan Annexe,  
Maulana Azad Road, New Delho.
2. The State of Arunachal Pradesh,  
Represented the Secretary, PWD,  
Government of Arunachal Pradesh  
Itanagar.
3. The Superintendent Engineer,  
PWD Boleng Civil Circle,  
East Siang Disgrict, Boleng.
4. The Executive Engineer,  
PWD, Yingkiong Division,  
Yingkiong, Arunachal Pradesh.
5. Mr. G. Yirang, the Executive Engineer,  
PWD, Yingkiong Division.
6. M/s Tribeni Construction Ltd.,  
Guwahati, House No. 36, Anil Nagar,  
4<sup>th</sup> by lane, Rajgarh link Road, Guwahati,  
Assam Office. ... Respondents.

**BEFORE**

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

For the Petitioners : Mr. T. Tagum,  
Mr. T. Nagu,  
Mr. H. Lampu,  
Mr. T. Uli. ... Advocates.

For the Respondents 2 & 4 : Mr. R. Saikia. ... Advocate.

For the Respondent No.5 : Mr. T. Jamoh  
Mr. T. Tapak  
Mr. T. Pabin  
Mr. L. Perme ... Advocates.

For the Respondent No.6 : Mr. K. Ete. ... Advocate.

Dates of hearing & Judgment : **24.3.2011**

### **JUDGMENT AND ORDER ( ORAL )**

Heard T. Tagum, learned Counsel appearing for the petitioner. The State respondents are represented by Mr. R. Saikia, learned Standing Counsel. The respondent No.6 is represented by Mr. K. Ete and the respondent No.5 is represented by Mr. T. Jamoh, learned Counsels.

**2.1** This matter pertains to the contract of construction of road from *Likar to Palling 0.00 to 20.00 k.m* with work value of RS.678.78 lakhs, for which notice inviting bid was issued by the Executive Engineer, P.W.D. in Yingkiong Division on 25.6.2010. In a 2 bid contract system, six bidders gave their technical and financial bids and the Chief Engineer, P.W.D. by order dated 26<sup>th</sup> August 2010 approved the technical bids of the writ petitioner and the respondent No.6 and directed the Executive Engineer to open the financial bids of the 2 technically qualified bidders at an early date, by forwarding the tenders to the Yingkiong division.

**2.2** Accordingly the date for opening of financial bid was fixed on 24<sup>th</sup> September 2010 and the 2 short listed tenders were asked to be present on the said date. Mean time, the Executive Engineer constituted a Screening Committee of 5 Members, to scrutinize the financial bids, when they are opened.

**3.** On 24<sup>th</sup> September 2010 the financial bids were opened in presence of the petitioner and the respondent No.6 and the Members of the Screening Committee were also present during the process. The financial bid of the respondent No.6 at Rs.6,17,63,205.84 was found to be lesser by Rs.30,89,107.23 to the bid of the petitioner at Rs.6,48,52,313.07 and

accordingly the bid of the respondent No.6 was evaluated to be the most competitive bid.

**4.** The petitioner challenges the validity of the financial bid of the respondent No.6 by contending that the Executive Engineer, Yingkiong Division has enabled the respondent No.6 to alter their financial bid to make it the most competitive vis-à-vis the bid of the petitioner and allegation of tempering with the sealed envelop of the petitioner containing the financial bid, is made by the petitioner.

**5.** Mr. T. Tagu, learned Counsel refers to the petitioner's written complaint made to the Superintending Engineer of the Boleng Civil Circle to show that, complaint of tempering with the petitioner's tender paper was made by the petitioner. The Counsel also contends that the Executive Engineer should not have made himself the Chairman of the Screening Committee and should have kept himself away from the scrutiny process and his involvement has given advantage to his rival bidder.

**6.** Representing the then Executive Engineer of the Yingkiong Division who is arrayed by name as respondent No.5, Mr. T. Jamoh, learned Counsel submits that financial bids were opened on 24<sup>th</sup> September 2010 in presence of both the short listed bidders and all the 5 Members of the Screening Committee. The learned Counsel refers to the averments of the respondent No.5 to project that, before opening the sealed envelopes containing the financial bids, the Screening Committee gave opportunity to both the tenderers to inspect the sealed envelopes which were then inspected and the same were admitted by the tenderers to be intact. Only after such admission, the envelope containing the financial bids were opened by the

Committee and no objection was raised by the petitioner at that point of time. Mr. Jamoh contends that only after learning that the bid offered by respondent No.6 was the lowest, the petitioner had made a false complaint of tempering with his envelope containing his financial bid.

**7.** Appearing for the official respondents, Mr. R. Saikia, learned Standing Counsel firstly submits that the petitioner never made any complaint of tempering at the relevant time when he inspected the sealed envelopes. Mr. Saikia also submits that the subsequent written complaint by the petitioner was an afterthought to thwart the contract being awarded to the L.1 bidder.

**8.** Representing the respondent No.6, Mr. K. Ete, learned Counsel submits that there is no relationship at all between the then Executive Engineer of Yingkiong Division and the respondent No.6 and the petitioner must be asked to prove the wrong and unsubstantiated allegation made by him. The learned Counsel further submits that the work order must not be held back as delay is neither in public interest nor in the interest of the contractor who is to execute the work.

**9.** Significantly in the written complaint of 25.9.2010 (Annexure-P2) to the Executive Engineer, Yingkiong Division, no allegation of tempering with the petitioner's sealed envelope was made by the petitioner. His complaint was about the respondent No. 6's envelope and the allegation was that it was unstamped and without the initials of the Proprietor of the firm. But surprisingly in the written complaint address to the Superintending Engineer on 24.9.2010 (Annexure-P1) significant changes in the complaint was made by alleging tempering and unsealing of the petitioner's envelope to learn in advance his quoted rate, to facilitate his rival (respondent No.6) to thereafter make a more

competitive bid than the petitioner. Obviously, if any such tempering of financial bid is done, the sanctity of the tender process itself would be impacted. But the question is whether tempering as alleged had actually occurred in the present case.

**10.** As can be seen from the affidavit(s) of the private and the official respondents that at the time of inspection of the sealed envelopes, the petitioner didn't claim that the seal was tempered. The financial bids were opened in presence of a 5 Member Screening Committee who too didn't notice any tempering. Therefore the truthfulness of the allegation has to be tested by considering all the attending circumstances and particularly petitioner's written complaint(s) addressed by him subsequently, to the Executive Engineer and to the Superintending Engineer.

**11.** As is already noted, in the written complaint addressed to the Executive Engineer (Annexure P2), allegation of tempering was missing and more importantly, no wrongdoing is attributed to the Executive Engineer who purportedly facilitated the respondent No.6 to make a more competitive offer. But in the complaint addressed to the Superintending Engineer, a substantially improved and different version is projected. Considering that both the complaint was made of the same incident, if there was any truth in the allegation, the complaint(s) shouldn't have been different. Furthermore if the rival contractor had the opportunity to revise his bid after learning the petitioner's bid as is alleged in the complaint addressed to the Superintending Engineer, it is difficult to comprehend as to why the difference in the rival bid was so substantial to the tune of over 30.00 lac. This itself creates doubts on the truthfulness of the petitioner's allegation made to the Superintending Engineer.

**12.** In so far as the allegation of involvement of the then Executive Engineer to facilitate the tempering of the sealed envelop, it is seen from the Annexure-P5, appended to the writ petition that the concerned engineer had availed of Earned Leave for 1 month w.e.f. 10<sup>th</sup> August 2010 and while he was on leave, the Chief Engineer on 26<sup>th</sup> August 2010 had approved the technical bids of 2 of the 6 tenderers and forwarded the same on 2.9.2010 to the office of the Executive Engineer for opening the financial bids of the technically qualified bidders. When these papers reached the office of the Executive Engineer, Yingkiong on 2.9.2010, the respondent No.5 was availing Earned Leave and the Executive Engineer of the adjacent Boleng Division was looking after the works in the Yingkiong Division. Only because the In-charge Executive Engineer during his tenure didn't open the financial bids, the respondent No.5 after his return from leave, had to undertake the exercise of financial bid opening process. In such circumstances, the involvement of the respondent No.5 in the finance bid opening process was incidental to his office. This was a contract under the Yingkiong division and his participation in the process as the Chairman of a 5 Member Screening Committee was natural and doesn't suggest any unfair conduct of the officer.

**13.** That apart, the sealed envelopes containing the financial bids were opened in presence of the 5 Member Scrutiny Committee and at that time, the petitioner had not pointed out that there was any tempering with his sealed envelope. If such tempering had actually occurred, the petitioner ought to have made his complaint then and there, to the members of the Screening Committee. But this was not done and from the written complaint addressed by the petitioner subsequently to the Executive Engineer, it is apparent that he did not even make a written complaint of tempering to the Executive Engineer,

although an improved version was projected subsequently before the Superintending Engineer. It can't also be overlooked that several persons including the Members of the Screening Committee didn't notice any aberration in the process.

**14.** The difference in the rival contractor's bid is more than Rs.30.00 lac and with an alleged advantage of prior knowledge of the rivals' bid through tempering of the sealed bid, one can reasonably assume that the competitor's bid would be only marginally higher and not to the tune of Rs.30.00 lac. Therefore the version projected by the petitioner can't be believed.

**15.** For the foregoing reasons, I find no merit in the petitioner's case and accordingly the writ petition is dismissed. Interim order, if any, stands recalled. The case is disposed of without any order on cost.

**JUDGE**