

GAHC040004452024



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(ITANAGAR BENCH)**

**Case No. : WP(C)/153/2024**

M/s Khenewa Group  
having its office at Waii Complex, Abotani Colony, Itanagar, Arunachal Pradesh  
791110 represented by its proprietor Shri Rumak Jomoh, Son of Shri Sam Jomoh,  
near Rajdhani Petrol Pump, A Sector, Naharlagun, Papumpare District, Arunachal  
Pradesh, PO and PS Naharlagun, Arunachal Pradesh

VERSUS

The State of AP and 4 Ors  
represented by the Secretary, Women and Child Development Department, Govt of  
Arunachal Pradesh, Itanagar, PO and PS Itanagar

2:The Director  
Age: 0  
Occupation :  
Women and Child Development Department  
Govt of Arunachal Pradesh  
Itanagar  
PO and PS Itanagar

3:The Joint Director  
Age: 0  
Occupation :  
Women and Child Development Department  
Govt of Arunachal Pradesh  
Itanagar  
PO and PS Itanagar

4:The Chairperson  
Age: 0  
Occupation :  
Tender Selection Committee  
C/o Director

Women and Child Development Department  
Govt of Arunachal Pradesh  
Itanagar  
PO and PS Itanagar

5:M/s F B Enterprises  
Age: 0  
Occupation :  
represented by its proprietor Shri Khya Fangcha  
C Sector  
Itanagar  
PO and PS Itanagar  
Papumpare District  
Arunachal Pradesh

**Advocate for the Petitioner** : Hage Lampu

**Advocate for the Respondent** : GA (AP)

**BEFORE**  
**HONBLE MR. JUSTICE KARDAK ETE**

**ORDER**

**Date : 02.04.2024**

Heard Mr. H. Lampu, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Additional Advocate General for the respondents no. 1 to 4.

The challenge made in this writ petition is the decision of the Tender Selection Committee, dated 29.02.2024, recommending the respondent no. 5, i.e. the M/s F. B. Enterprises for award of supply of "Pre School Kits" in terms of the NIT, dated 15.01.2024, issued by the Secretary, Women & Child Development Department, Government of Arunachal Pradesh.

The learned counsel for the petitioner referring to the Office Memorandum, dated 21.04.2022, submits that since the lowest evaluated bidder has withdrawn his bid, the authority ought to have issued re-tender for

procurement of supply for Pre School Kits. Having not been done, the authority has illegally decided to award the contract to the respondent no. 5 in violation of the said Office Memorandum.

Mr. R. H. Nabam, learned Additional Advocate General has expressed doubt on the applicability of the Office Memorandum, dated 21.04.2022 in the present tender process as the learned counsel for the petitioner has admitted that the said Office Memorandum is not a part of the Standard Bidding Document. He submits that assuming that the said Office Memorandum is applicable in the present matter, it is only on the 2 (two) contingencies, i.e. if the lowest admitted bid withdraws or whose bid has been accepted, fails to sign the procurement contract or fails to provide the security, then only the re-tender has to be done.

Issue notice, returnable in 2 (two) weeks.

Since the respondents no. 1 to 4 are duly represented by Mr. R. H. Nabam, learned Additional Advocate General, no formal notice need be served to the said respondents. However, extra-copies of the writ petition, requisite in numbers, be furnished to him during the course of the day.

Steps for service of notice upon the respondent no. 5 be taken by registered post with A/D as well as by usual process, within 3 (three) days.

Heard on the interim prayer.

On perusal of the Office Memorandum, dated 21.04.2022 and the part of the manual at page 40, it is noticed that the amended paragraph states that if

the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case.

Having considered the above Office Memorandum, dated 21.04.2022, I am of the *prima facie* view that since the lowest evaluated bidder (L1) has withdrawn in the present case, the authority is required to re-tender the case. Although this Court *prima facie* finds that the authority ought to have re-tender the case, in view of the letter dated 13.03.2024, issued by the Director, Women and Child Development Department, Govt. of Arunachal Pradesh, I am of the view that no interim order is called for, considering that the present tender relates to supply of Pre School Kits. However, the award for contract of supply of Pre School Kits pursuant to NIT, dated 15.01.2024, shall be subject to the outcome of the writ petition.

List it after 2 (two) weeks.

**JUDGE**

**Comparing Assistant**