

GAHC040007872024



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

Case No. : WP(C)/244/2024

M/s N T Agency

having its head office at B Sector Naharlagun, PO Naharlagun, Papumpare District,
represented by its sole proprietor Shri Nabam Tadap, S/o Late Nabam Lilung, resident
of Paga Tara, (Jullang Village) PO Naharlagun, Papumpare District, AP 791110

VERSUS

The State of AP and 8 Ors

represented by the Secretary, RWD, Govt of AP, Itanagar 2:The Secretary

Age: 0

Occupation :

RWD cum Empowered Officer

Arunachal Rural Road Development Agency (ARRDA)

Itanagar

3:The Chief Engineer (PMGSY)

Age: 0

Occupation :

Department of RWD

Govt of AP

Itanagar

4:The Superintending Engineer

Age: 0

Occupation :

Rural Works Circle

Pasighat

Department of RWD

Govt of Arunachal Pradesh

5:The Execcutive Engineer/ PIU

Age: 0

Occupation :
RWD
Yingkiong Division
Upper Siang District
Govt of Arunachal Pradesh

6:Tender Evaluation Committee

Age: 0

Occupation :

Construction of Road from L0 26- Ningging Village to Tenggo (BOP) under the Scheme of Vibrant Village Programme headed by its Chairman
Superintending Engineer
Rural Works Circle
Pasighat.

7:M/s R D Construction

Age: 0

Occupation :

represented by its proprietor Mr Tashi Khandu
having its registered office at Tawang
PO Lembardung
PS Tawang
District Tawang
Arunachal Pradesh 790104

8:M/s TTC Traders India

Age: 0

Occupation :

represented by its proprietor Tashi Doma
having its registered office at Bazar Line
Bomdila
West Kameng District
PO and PS Bomdila
Arunachal Pradesh 790001

9:M/s TTC Infra India

Age: 0

Occupation :

represented by its proprietor Tashi Doma
having its registered office at Bazar Line
Bomdila
West Kameng District
PO and PS Bomdila
Arunachal Pradesh 79000

Advocate for the Petitioner : Taba Tagum

Advocate for the Respondent : Gimi Tarak

**BEFORE
HONBLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

24.06.2024

Heard Mr. Taba Tagum, learned counsel for the petitioner and Mr. Gimi Tarak, learned standing counsel for the Rural Works Department as well as Arunachal Pradesh Rural Works Agency representing all the official respondent Nos. 1 to 6.

Pursuant to an NIT dated 26.02.2024, issued by the Executive Engineer, RWD, Yinkyong relating to constructions of roads under Vibrant Village Programme (VVP) from LO26- Ningging village to Tenggo (BoP) and its maintenance for five years, the petitioner along with others submitted their bids.

The Bid Evaluation Committee in the RWD on 12.06.2024, recommended the respondent Nos. 7 and 8 as technically responsive bidders and found them to be qualified and eligible for opening of their Part-II-Financial Bids, whereas found the petitioner to be non-responsive in its Technical Bid.

The said Bid Evaluation Report-Part-I/Technical Bid was uploaded in the concerned website of the RWD on 16.06.2024. The petitioner on 17.06.2024, 18.06.2024 and 20.06.2024 submitted its representations before the Chief Engineer (PMGSY), ARRDA, RWD as per the provisions of Clause-22.6 of the Instructions to Bidders (ITB) relating to the impugned NIT dated 26.02.2024.

As its representations, noted above, have not been considered by the respondent authorities as required under said Clause-22.6 of the ITB, the petitioner has filed this writ petition.

On being enquired as to whether the respondent authorities received such representations of the petitioner or not and if so, the status of said representations, Mr. Tarak, learned standing counsel representing the respondents herein, on instruction, submitted that the respondent authorities have duly received the representations of the petitioner on 18.06.2024, but in the meanwhile, the concerned Board on 18.06.2024 have already opened the Financial Bids of the technically responsive bidders, i.e., respondent Nos. 7 and 8. In that regard, Mr. Tarak, learned standing counsel placed the relevant Bid Evaluation Report dated 12.06.2024 (Annexure-4 to this writ petition), wherein the concerned Board indicated that Financial Bids would be opened on 18.06.2024 in the Office of the Chief Engineer, RWD at Itanagar.

Mr. Tagum, learned counsel for the petitioner placed the provisions of Clause 22.6 of the Instruction to Bidders relating to the impugned NIT dated 26.02.2024 pertaining to "Bid Opening and Evaluation", which stipulates as follows:

"22.6. The result of evaluation of Part-I of the Bids shall be made public on e-procurement systems following which there will be a period of five working days during which any bidder may submit complaint which shall be considered for resolution before opening Part-II of the bid."

On perusal of said Clause 22.6 of the ITB relating to the impugned NIT

dated 26.02.2024, it can be seen that a period of five working days have been provided to the bidder from the date on which the bids has been made public on E-Procurement System to submit complaints to be considered for resolution before opening Part-II of the bid i.e., the Financial Bid.

In the case in hand, apparently, the Bid Evaluation Report Part-I, i.e., the Technical Bids of the bidders pursuant to the NIT dated 26.02.2024, impugned in this writ petition, was uploaded in the website of the respondent authorities on 16.06.2024, (Annexure-4, Page 134 to 136 to the writ petition), whereas respondent authorities opened the Financial Bids of the responsive bidders, respondent Nos. 7 and 8, within two days from such publication of the Bid Evaluation Report Part-I/Technical Bid Report of the bidders, including the petitioner and the respondent Nos. 7 and 8 in the concerned website of the respondents, without first considering the complaint/representation of the petitioner, in clear violation of the provisions of Clause-22.6 of the ITB, involved in this petition.

Issue notice, returnable by **18.07.2024**.

Petitioner shall serve requisite extra copies of this writ petition along with the annexures appended thereto to Mr. Tarak, learned standing counsel for RWD, representing all the respondents, by 25.06.2024 obtaining necessary acknowledgement from him, in that regard.

The petitioner shall take steps on respondent Nos. 7, 8 and 9 by registered post with A/D, by tomorrow, i.e., 25.06.2024 providing their correct addresses and requisite postal stamps.

Opening of the Financial Bids of the respondent Nos. 7 and 8 by the

respondent authorities on 18.06.2024, pursuant to the impugned NIT dated 26.02.2024 in violation of the provisions of Clause-22.6 of the ITB involved in this case and any further decision by the respondents in the RWD pertaining to the NIT vide No. EEY/RWD/VVP/2023-24 dated 26.02.2024, issued by the Executive Engineer/PIU, RWD, Yingkiong, noted above, shall be subject to the outcome of this writ petition.

List accordingly.

JUDGE

Comparing Assistant