

WP(C) 460/2014

BEFORE

THE HON'BLE MR. JUSTICE M.R. PATHAK

Heard Mr. T.Gyadi, learned counsel for the petitioner. Also heard Ms. Geeta Deka, learned Addl. Senior Government Advocate, for State Respondents No. 1 to 5.

The Respondent No. 4 viz. Executive Engineer, Dumporijo PDW Division, Dumporijo, vide Notice Inviting Tender(NIT, for short) dated 26.01.2014, invited tenders for 6 packages for development of infrastructures and constructions of office buildings within the Dumporijo PWD division of Upper Subansiri District. The said NIT was published in the local English Daily "Arunachal Front" and the value of the contract was Rs. 5,75,97,419. As per the said NIT, the last date of submission of bids was 12.00 noon of 03.12.2014 and the date of opening of the tenders was fixed on 03.12.2014, itself, at 3.00 pm by the Executive Engineer or his authorized representative in presence of the intending tenderers. The petitioner, namely, M/s Nabam Sera participated in the tender processes of 5 packages of the said NIT dated 26.11.2014 amounting to Rs. 4,16,85,994/-. The said tender process contained 2 bids system that includes both technical and financial bids and the petitioner participated in both systems of bids for 5 packages. As 03.12.2014 was declared a holiday by the State government, the tender could not be opened on the said date and it was opened on 04.12.2014, around 6.30 pm and the petitioner authorized one Shri Siktum Yudik of Dumporijo to represent/witness/attend the bidding process on behalf of the petitioner. However, the Respondent No. 4 viz. Executive Engineer, Dumporijo PWD Division, Dumporijo, rejected/denied the said Shri Siktum Yudik for representing on behalf of the petitioner during the tender opening process as said Shri Siktum Yudik is as a government employee and serving as an Administrative Assistant in MGNREGA.

The petitioner stated that he, on 05.12.2014, authorized one Shri Takar Yudik in place of Shri Siktum Yudik to represent him as witness but the above noted Respondent No. 4 did not allow and accept the same and further did not allow the said Takar Yudik representing the petitioner, to produce the original documents as asked for in the Instruction to Bidders in the NIT dated 26.11.2014. The grievance of the petitioner is that the said Respondent No. 4 did not allow the representative of the petitioner to attend the tender opening process on 04.12.2014 without any reasons and his bids were not opened and accepted in presence of his representatives, hence, he has filed the present writ petition.

The State respondents have filed their affidavit in this matter and stated that a 6-member Board was constituted for opening of the tender as issued on 26.01.2014 that includes Executive Engineer, PWD, as chairman; Assistant Executive Engineer, Baririjo; Assistant Engineer, SD-I; Circle Officer, Maro; Assistant Engineer, Power, Dumporijo; and the Divisional Accountant of the said Division.

The State Respondents further stated that on 04.12.2014, at the appointed time, i.e. 3.00pm in the afternoon, tenders were opened for each of the packages from package No. 1 and all the tender bidders/representatives were asked to be seated in the office chamber of the Respondent No. 4. When the earnest money deposited for the 1st package was just opened and recorded, one participant of the tender, objected the participation of Shri Siktum Yudik participating on behalf of the petitioner's enterprise as he is a government employee and serving as an Administrative Assistant under MGNREGA of CD Block Dumporijo, and further, a document to that extent was placed before the Board and all the participants objected the participation of Shri Siktum Yudik as authorized person on behalf of the petitioner, he, being a government employee, and who is, as such, not eligible for participation. As the situation was slightly going out of control, police was called on to bring the situation under control and the Board decided to bar the petitioner from the tender opening process and the said person was asked to leave the room. When the process of opening of tender was re-started, the said person coming from backside, in a sudden move, snatched away the tender packets and

the tender papers and run away. Police tried its best to stop him and retrieve the tender packets and a First Information Report(FIR) was also lodged with the Dumporijo police station and a copy of the said FIR was handed over to the Officer-in-Charge of the Dumporijo police station who was present in the office chamber of the Respondent No. 4 viz. Executive Engineer, Dumporijo PWD Division, Dumporijo. However, on the request of some of the senior persons, the said FIR was withdrawn and as assured by the senior persons, the tender packets alongwith the tender papers in complete shape were brought back from the said Siktum Yudik. Thereafter, the tender opening process went on smoothly and was completed at 12.30 am of 05.12.2014.

As per the tender papers and in terms of the NIT dated 26.11.2014, conditions were incorporated that the original documents should be furnished by the bidders/representatives at the time of opening of the tenders. As some of firms who participated in the said tender process, failed to produce the requisite documents in original, their financial bids were not opened and only their names were recorded. The firms which failed to furnish the original documents in terms of the NIT dated 26.11.2014 are:- (i) present petitioner (ii) one M/s Kenge Enterprise Itanagar; and (iii) M/s Ranjan Bora Enterprise, Karbi Anglong, Assam.

The State Respondents further contended that on 06.12.2014, one Shri Takar Yudik came to the office of the said Respondent No. 4 and produced a copy of the authorization letter issued by the petitioner with the endorsement of Executive Magistrate, Itanagar Capital Complex, Naharlagun, to show that the petitioner, on 05.12.2014, has authorized him i.e. Sri Takar Yudik to participate in the said tender opening process on behalf of the petitioner. However, on 06.12.2014, the State Respondents, more particularly, Respondent No. 4 did not accept the said authority letter which was executed on behalf of said Sri Takar Yudik and duly endorsed by the Executive Magistrate as the said Takar Yudik produced the said documents only on 06.12.2014 as the State Respondents have already opened and considered the tender papers, on 05.12.2014 at 12.30AM itself. It is to be noted that the tender papers, in pursuant to the said NIT dated 26.11.2014, were opened on 04.12.2014 at around 3.00PM and concluded at around 12.30AM of 05.12.2014.

The petitioner, in his reply, submitted that the original documents, in his favour, could not be placed at the time of opening the bids as the State Respondents did not allow his authorized representative viz. Sri Siktum Yudik to place those documents in his favour which the State respondents could have scrutinized the documents of the petitioner in absence of his witness also. The petitioner also stated that on 05.12.2014, Sri Takar Yudik was authorized by him in place of Sri Siktum Yudik to represent on his behalf as witness but the said Respondent No. 4 did not accept the same and the petitioner was not given any opportunity for producing the original documents in terms of the said NIT dated 26.11.2014.

From the aforesaid facts, it is very clear that the petitioner was represented on the tender opening process on 04.12.2014 by Sri Siktum Yudik. It is not the case of the petitioner that Sri Siktum Yudik is not a government employee. Moreover, it is also not the case of the petitioner that a government employee can participate in the tender process on behalf of an individual private contender.

The State respondents contended that all the participants of the tender process, in pursuant to NIT dated 26.11.2014, objected the participation of Sri Siktum Yudik, a government employee. In participating on behalf of the petitioner in the said tender process and because of his own misconduct, as stated above, Sri Siktum Yudik had to leave the office room of the Respondent No. 4, wherein the tender documents were opened.

It is also seen that the petitioner, only on 05.12.2014, authorized one

Sri Takar Yudik to represent him in the tender opening process and to produce the said original documents before the said Respondent No. 4 on 06.12.2014 and by that time, the tender process in terms of the NIT dated 26.11.2014 was already considered.

Further, the petitioner's participation in the said tender process was rejected as he had failed to furnish the original documents in terms of the Instruction to Bidders (ITB) furnished along with the tender documents in pursuant to the NIT dated 26.11.2014.

From the aforesaid facts and circumstances of the case, this Court is of the considered view that the State Respondents No. 1 to 5 have not committed any illegality in not opening the financial bids of the 5 packages in which the petitioner participated in pursuant to the NIT dated 26.11.2014 as the tender papers of the said Notice Inviting Tender, contained specific conditions to the effect that original documents need to be furnished by the bidders/ representatives at the time of opening of the bidding documents.

As the petitioner failed to produce the original documents in terms of the conditions as laid down in the NIT dated 26.11.2014, at the time of opening of the bidding documents on 04.12.2014, action of the state respondents does not confer any interference in its jurisdiction.

In view of the above, this writ petition is hereby dismissed.

Interim order passed earlier on dated 10.12.2014 shall automatically stand vacated.