



GAHC010101052021

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

Case No. : WP(C)/3258/2021

M/S RISHA INFRASTRUCTURE
REPRESENTED BY THE PROPRIETOR , SRI PRONOB DUTTA, AGED 41
YEARS, S/O LATE P.C DUTTA,
R/O K.C ROAD, HOUSE NO. 21, CHATTRIBARI, PS PALTAN BAZAR, DIST
KAMRUP M ASSAM, 781005

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT, DISPUR
GUWAHATI 06

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE.

ASSAM
PANJABARI
GUWAHATI 781037

3:THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FORESTS

SOCIAL FORESTRY
ASSAM
PANJABARI
GUWAHATI 37

4:THE DEPUTY CONSERVATOR OF FORESTS

SOCIAL FORESTRY
ASSAM
PANJABARI
GUWAHATI 37



5:THE CONSERVATOR OF FORESTS

LOWER ASSAM SOCIAL FORESTRY CIRCLE
BONGAIGAON

6:THE DIVISIONAL FOREST OFFICER

SOCIAL FORESTRY DIVISION
BARPETA

7:M/S MACROCOSM BUILDERS.

BMB MARKET
1ST FLOOR
B.B ROAD
BARPETA TOWN
BARPETA
ASSAM 78130

For the Petitioner(s) : Mr. F. U. Barbhuiya, Advocate

For the Respondent(s) : Mr. D. Gogoi, SC, Forest Department
: Mr. R. Mazumder, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 09-11-2023

1. The instant writ petition has been filed by the Petitioner seeking a writ in the nature of Certiorari for setting aside and quashing the impugned communications dated 07.06.2021, 17.06.2021 and 18.06.2021 as well as also for a writ in the nature of Mandamus not to give effect to the said communications and for a direction to offer Contract Work in question being the Roadside Plantation (Avenue & Median) of the National Highway at NH-

31(C)(New 27) stretch – from Km 993 to 1003 of AS08, against package No.2 in favour of the Petitioner in terms with the Tender, as well as also restraining the Respondents from allowing the Respondent No.7 to execute the Contract Work against the package No.2 of Roadside Plantation (Avenue & Median) of National Highway at NH-31(C)(New 27) stretch – from Km 993 to 1003 of AS08.

2. The facts involved in the instant writ petition as could be seen from the pleadings on record are that the Respondent No.6 had issued a tender notice dated 11.01.2021 inviting online bids from eligible bidders for settlement of different packages including Package No.2 of Roadside Plantation (Avenue & Median) of National Highway at NH-31(C)(New 27) stretch – from Km 993 to 1003 of AS08. The total value of the work including all taxes was Rs.2,56,64,070/-. The said tender notice was published in various newspapers on 13.01.2021.

3. It is relevant to take note of that as per the said tender notice, the last date for downloading the tender was 01.02.2021 but it was extended upto 05.02.2021 by corrigendum dated 23.01.2021 in respect to all the packages i.e. package Nos.1, 2, 3 and 4. Further to that in the said corrigendum, some of the conditions were modified including the experience of the bidder in Plantation and Nursery Works. It is notable for the purpose of the instant writ petition that in the corrigendum dated 23.01.2021, at Clause-6 an additional term was inserted as a tender condition. The said Clause-6 being relevant is quoted hereinbelow:

“6. Please also add & read as - in tender conditions that – (I) Variation of the quoted price up to 5 % (positive or negative) over the approved estimate cost may

be allowed. (II) Variation of the quoted price/rate up to 10% (positive or negative) over the approved estimate cost may be allowed for peculiar situations and in special circumstances. (III) Tenders beyond 10% (positive or negative) over the approved estimate cost shall not be accepted."

4. From the above quoted Clause-6, it reveals that the variation of the quoted price up to 5 % (positive or negative) over the approved estimate cost may be allowed. Further to that, variation of the quoted price/rate up to 10% (positive or negative) over the approved estimate cost may also be allowed for peculiar situations and in special circumstances. However, tenders beyond 10% (positive or negative) over the approved estimate cost shall not be accepted.

5. The Petitioner thereupon submitted its tender along with various other bidders. The Technical bid was opened on 06.02.2021 and the Financial bid was opened on 17.02.2021. Accordingly, on the basis of the said Technical bid and the Financial bid, the Tender Committee prepared a comparative statement of all the participating bidders. Subsequent thereto, the Respondent No.6, vide a communication dated 25.02.2021 forwarded the comparative statements of both Technical and the Financial bids against package No.2 to the Respondent No.5 for necessary steps in the matter. It is pertinent to mention that in the forwarding letter dated 25.02.2021 of the Respondent No.6, it was stated that all the 8 tenders were found valid in technical capabilities and the bidders under Serial Nos. 1, 2, 3, 5, 7 and 8 have offered the rate below 5% from the estimated cost. The tenderer at Serial No.4 i.e. the Respondent No.7 had offered the rate as 10% below from the estimated cost and the tenderer at Serial No.6 had offered rate as 9.99% below. It was also mentioned in the said communication that the concerned Respondent Authorities while taking steps in the matter, shall also take note of the Government notification dated

12.07.2018 and the letter of the Principal Chief Conservator of Forest and Head of Forest Force dated 27.07.2020.

6. Before further proceeding on the facts, this Court finds it relevant to take note of the notification dated 12.07.2018. The said notification is a notification issued by the Commissioner and Special Secretary to the Government of Assam, PWRD wherein it has been stipulated that unreasonably lower rates quoted by some of the civil works contractors vis-à-vis the approved estimated cost had adversely effected the quality of works as well as the timely completion of the works and on the other hand unreasonable higher rates quoted by some of the civil works contractors puts undue pressure on the State's exchequer and therefore, in the interest of public service, the Governor of Assam notified the principle for award of all Civil Works contracts under the Assam PWRD, whereby variation of the quoted price up to 5% (positive or negative) over the approved estimated cost of a Civil Work may be ignored; and variation of the quoted price up to 10% (positive or negative) may be allowed for peculiar situations and in special circumstances, and the reasons for allowing to do so shall be placed on the record by the officer(s) responsible for accepting the tenders/bids; tenders/bids beyond this limit shall not be accepted. It was also mentioned in the said notification that the principle shall come into effect from 15.07.2018 and shall prevail until further orders.

7. Subsequent thereto, the Office of the Principal Chief Conservator of Forests & Head of Forest Force had also issued a communication dated 27.07.2020 whereby the said principles as stipulated in the notification dated 12.07.2018 were also made applicable in respect to the acceptance of quoted bids against any tender of the Forest Department. At this stage, this Court at

the cost of repetition again finds it relevant to mention that the corrigendum dated 23.01.2021 and more particularly Clause-6 as above quoted was in terms with the principles as mentioned in the notification dated 12.07.2018 issued by the Commissioner and Special Secretary to the Government of Assam, PWRD as well as the communication dated 27.07.2020 issued by the Chief Conservator of Forests and Chief Executive Officer, State, CAMPA, Assam.

8. This Court further finds it relevant to take note of that pursuant to the communication dated 25.02.2021 issued by the Respondent No.6, on the very date the Conservator of Forests, Lower Assam Social Forestry Circle, Bongaigaon had issued another communication to the Chief Conservator of Forests, Social Forestry wherein it has been mentioned that the bids of the tenderer at Serial No.4 i.e. the Respondent No.7 and the tenderer at Serial No.6 cannot be accepted in view of the notification dated 12.07.2018 and the communication dated 27.02.2020. In the said communication, it was also mentioned that the other tenderers i.e. the tenderers at Serial Nos. 1, 2, 3, 5, 7 and 8 though have quoted equal rates as per the Financial bid but while comparing the Technical bids, the Petitioner's bid was found as the lowest evaluated responsive bidder for the allotment of the works.

9. Be that as it may, almost after four months i.e on 07.06.2021, the Additional Principal Chief Conservator of Forests i.e. the Respondent No.3 issued a communication to the Respondent No.2 stating inter alia that 8 valid bids were received pursuant to the tender and the Respondent No.7 has emerged as the lowest bidder as its bid was 10% less than the estimated rate and as such the Additional Principal Chief Conservator of Forests was of the considered view that the tender may be settled with the Respondent No.7. It is



however pertinent to observe that there was no mention in the said communication as regards any peculiar situation and existence of any special circumstances. Subsequent thereto, the Additional Principal Chief Conservator of Forest (P&D) in the Office of the Respondent No.2 issued a communication dated 17.06.2021 to the Respondent No.3, informing the Respondent No.3 to award three numbers of tenders of the Divisional Forest Officer, Barpeta Social Forestry Division and one number of tender of the Divisional Forest Officer, Bongaigaon Social Forestry Division to the lowest evaluated, substantially responsive bidders, as per norms as proposed by the Respondent No.3 for execution of Roadside Plantation along with the National Highways funded by the National Highway Authority of India.

10. Subsequent thereto, on 18.06.2021, the Respondent No.4 issued a communication to the Respondent No.5 whereby the documents along with the tender papers for execution of Roadside Plantation in the National Highways were returned for information and necessary action. The Petitioner thereupon having come to learn about the said communications dated 07.06.2021, 17.06.2021 and 18.06.2021 and the proposed move on the part of the Respondent Authorities to settle the tender in favour of the Respondent No.7 had approached this Court by filing the present writ petition on 06.07.2021.

11. It is also relevant herein to mention that on 06.07.2021, a copy of the writ petition was received on behalf of the Standing counsel of the Forest Department. This Court vide an order dated 13.07.2021 issued notice making it returnable on 23.07.2021 and observed that till the next date, the status quo in respect of the contractual job shall be maintained as on 13.07.2021. The interim order thereafter has been continued from time to time.

12. The record further reveals that the Respondent No.6 had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that pursuant to the tender process, total 8 numbers of bids were received including that of the Petitioner and the Respondent No.7. It was stated that upon evaluation of the bids, all the 8 bids were considered technically responsive and thereupon the price bids were opened. It was mentioned that as against the estimated rate of Rs.2,56,64,070/-, the Petitioner quoted an amount of Rs.2,43,80,886.50/- and the Respondent No.7 quoted Rs.2,30,97,663/- which were below 5% and 10% respectively of the estimated rate. It was further mentioned that the Respondent No.7 was asked by the Divisional Forest Officer, Social Forestry Division, Barpeta as to how he would be in a position to perform the work as per his quoted rate and the Respondent No.7 had submitted that he had an existing huge stock of seedlings for plantation along the PMGSY and SOPD Roads. The Respondent No.7 also mentioned that he had a large plantation area for collection of bamboos for sealing tree guards. The Respondent No.7 had also mentioned that there shall be no compromise with the quality of works and his estimated tender cost includes a profit margin of 10% for the contractor. Further to that, it was also mentioned by the Respondent No.7 that the additional profit margin would depend upon the management and utilization of resources including manpower by the contractor. The said justification provided by the Respondent No.7 was duly considered while recommending the settlement of the tender in favour of the Respondent No.7 who offered the rate which was 10% below the estimated tender value.

13. It was also stated in the Affidavit of the Respondent No.6 that on 02.07.2021, a Letter of Acceptance was issued to the Respondent No.7 and the

Respondent No.7 was asked to deposit the security money and execute an agreement within seven days. Thereupon, the Agreement was entered into on 07.07.2021. On 10.07.2021, a meeting of the tender evaluation committee was held for award of work. In the meantime as the Letter of Acceptance was already issued, the Agreement was executed and the security money has been paid, the Committee recommended to issue the work order to proceed with the work and consequently, on 12.07.2021, notice to proceed with the work was issued.

14. At paragraph No.10 of the Affidavit, the Respondent No.6 stated that the decision to allot the work in favour of the Respondent No.7 was with valid justification and was well within the ambit of the order dated 27.07.2021, which decision, remained un-assailed. Further, the free play granted by the order dated 27.07.2021 within 5% to 10% below of the estimated cost has been reasonably exercised ensuring quality of work and safeguarding the Government revenue. It was further mentioned that the status quo order dated 13.07.2021 was absolutely in favour of the Respondents, since prior to such order, Letter of Acceptance was issued, security deposit was paid, agreement was executed and even the notice to proceed with the work was issued on 12.07.2021. At this stage, this Court finds it relevant to observe that the order referred to at Paragraph No.10 of the Affidavit dated 27.07.2021 was not enclosed to the said Affidavit.

15. The record further reveals that the Respondent No.7 has also filed an affidavit-in-opposition on 24.08.2021 where the facts stated in the affidavit-in-opposition filed by the Respondent No.6 were reiterated. Be that as it may, there is no mention whatsoever in the affidavit-in-opposition filed by both the



Respondent Nos. 6 and 7 that the Respondent No.7 proceeded with the work pursuant to the letter dated 12.07.2021.

16. The Petitioner had also filed an affidavit-in-reply to the affidavit-in-opposition filed by the Respondent No.6. In the said affidavit-in-reply, the Petitioner questioned as to under what circumstances, the Divisional Forest Officer i.e. the Respondent No.6 had asked and chosen the Respondent No.7 to furnish justification about his quoted bid of 10% against the contract works. It was mentioned that though the Respondent No.7 vide the communication dated 19.02.2021 stated that he had huge ready stock of supply in hand for the purpose of Roadside Plantation of newly constructed roads under PMGSY and SOPD works but the same was contrary to the comparative statement enclosed as Annexure-D to the affidavit-in-opposition filed by the Respondent No.6 inasmuch as the said comparative statement shows that the Respondent No.7 has no experience in the plantation works. It was further mentioned that the Tender Notice dated 11.01.2021 specifically stipulated that the bidders should have experience in the field of Plantation and Nursery but before the last date of submission of tenders by the bidders i.e. on 01.02.2021, the Respondent No.6 issued a corrigendum dated 23.01.2021 that the experience of bidder in Plantation of Nursery Works as preferable criteria is not mandatory, which goes to show that the Respondent No.6 has chosen the Respondent No.7 to provide the specific contract work to Respondent No.7. It was further mentioned that the copy of the letter dated 19.02.2021 (wrongly mentioned as 18.02.2020) was also forwarded to the Respondent No.5 and the Respondent No.3 verbally instructed the Respondent No.5 to give his reply of the tenderer who offered below 10% of the estimated rate. Accordingly, the Respondent No.5 vide letter dated 26.04.2021 informed the Respondent No.3 that the reply

of the tenderer was not maintainable at all as per the tender conditions and there is neither any peculiar situation nor any special circumstances which exists for accepting the tender of those who offered below 10% or 9.99% from the estimated cost and against which there are sufficient numbers of successful qualified tenders received within the limit of 5% below from the estimated cost. It was further stated in the affidavit-in-reply that in spite of the said facts, the Respondent Authority has accepted the tender of Respondent No.7 which was illegal, arbitrary, malafide, unjust, improper and against the principles of natural justice and administrative fair play. It was further stated that the impugned proposal and the approval as well as the order for execution of works vide communications dated 07.06.2021, 17.06.2021 and 18.06.2021 respectively were challenged and as such the subsequent communications relating to issuance of work order and execution of agreement were not maintainable and even the works (if any) were done by the Respondent No.7 after the order dated 13.07.2021 passed in the instant case amounted to violation of this Court's order.

17. The instant writ petition was listed on 11.08.2023 before this Court and this Court directed that the matter to be listed again on 24.08.2023 and also extended the interim order till the next date. On 24.08.2023, the records were produced by the learned Standing counsel for the Forest Department but he expressed his difficulties in doing the matter in view of the fact that he could not go through the records. This Court fixed the matter again on 06.11.2023 and the interim order passed earlier was directed to be continued till the next date. It was further made clear that any work so done shall be subject to the outcome of the writ petition and the Respondent No.7 cannot claim any equity on the basis of such works. Further to that, this Court had also directed that no

amount be released to the Respondent No.7 till the next date.

18. On 06.11.2023, when the matter was again taken up by this Court, the standing counsel appearing for the Forest Department still expressed his inconvenience as he did not go through the records properly and accordingly, this Court granted an additional opportunity by fixing the matter again on 07.11.2023 at 2 PM.

19. On 07.11.2023, the matter was taken up and the records were duly perused. This Court finds it relevant to take note of that upon perusal of the records, nothing could be seen that the authorities concerned who had taken the decision to award the contract to the Respondent No.7 had recorded any reasons or noted anything that there existed any peculiar situations and special circumstances for allowing up to 10% below the estimated contract price to the Respondent No.7. This Court further enquired with the learned counsel for the Respondent No.7 as to the amount of work carried out taking into account that there was a status quo order on the contractual job and permitted the Respondent No.7 to file an affidavit stating the amount of work carried out till date.

20. The Respondent No.7 filed an affidavit on 09.11.2023. In the said affidavit-in-opposition, it was mentioned that the Respondent No.7 was offered a preliminary work order on 02.07.2021 and subsequently, an agreement was entered into on 07.07.2021 and on the basis of the same, the Respondent No.7 proceeded with the work i.e. plantation of approximately 10,559 numbers of trees along the designated route. It was further mentioned that on 12.07.2021, the notice was issued to proceed with the works. In addition to the said, it was also stated that the Respondent No.7 had carried out the works allotted to him

and in fact, a report indicating such carrying out of work i.e. plantation of 10,559 numbers of trees against Package No.2 was also furnished by the competent authority.

21. I have heard the learned counsels for the parties. The facts enumerated hereinabove as well as the notifications dated 12.07.2018, the communication dated 27.07.2020 and the corrigendum issued on 23.01.2021 makes it apparently clear that variation of the quoted price/rate up to 10% (positive or negative) over the approved estimated cost can only be accepted for peculiar situations and special circumstances. The notification dated 12.07.2018 as well as the communication dated 27.07.2020 makes it further clear that the reasons for allowing up to 10% (positive or negative) of the estimated price shall be placed on record by the Officer responsible for accepting the tenders/bids. This Court have duly perused the records. Neither in the records nor even in the order by which the Respondent No.7 was allotted the contract in question, there were anything mentioned about the existence of peculiar situations as well as special circumstances. This Court also finds it very pertinent at this stage to note the submission of Mr. D. Gogoi, the learned Standing counsel for the Forest Department who also candidly submitted that there were nothing on record of recording such reasons pertaining to the existence of peculiar situations and special circumstances. He submitted that the reason for granting the contract to the Respondent No.7 was that the rate at which he had quoted would save public money. This Court is of the opinion that if saving public money was the sole criterion, then the notification dated 12.07.2018, the communication dated 27.07.2020 as well as the corrigendum dated 23.01.2021 would not have specified that up to 5% (positive or negative) of the estimated cost, the same would have been ignored; up to 10% (positive or negative)

over the approved estimated cost can be permitted for peculiar situations and special circumstances and above 10% (positive or negative) of the approved estimated cost cannot be accepted. Therefore, the reason for allotting the contract in favour of the Respondent No.7 without recording that there existed peculiar situations and were in special circumstances was contrary to the notification dated 12.07.2018, the communication dated 27.07.2020 as well as also contrary to the corrigendum dated 23.01.2021. Therefore, on this very ground itself, the allotment of the contract in respect of the Package No.2 in favour of the Respondent No.7 was contrary to the communication dated 27.07.2020 as well as the tender condition incorporated vide the corrigendum dated 23.01.2021.

22. Now the question arises as to whether this Court in view of the flagrant violation to the communication dated 27.07.2020 as well as the Clause-6 of the corrigendum dated 23.01.2021 should interfere with the contract in question taking into account the Letter of Acceptance was issued on 02.07.2021; the agreement was entered into on 07.07.2021 and the letter to proceed with the work was issued on 12.07.2021 and in the meantime, more than 2 (two) years have elapsed. The record reveals that the writ petition was filed on 06.07.2021 by serving an advance copy to the Standing counsel of the Forest Department. In spite of that, on 07.07.2021, the agreement was entered into and on 12.07.2021, the notice to proceed with the work was issued. On 13.07.2021 when the matter was first listed, this Court after hearing the Standing counsel for the Forest Department directed that till the next date, i.e. on 23.07.2021, the status quo in respect of the contractual work shall be maintained as on 13.07.2021.

23. Now, let this Court take note of the affidavit-in-oppositions filed by the Respondent Nos. 6 and 7. In both the affidavit-in-opposition filed by the Respondent Nos. 6 and 7, there is/are no mention whatsoever as to what steps were taken by the Respondent No.7 pursuant to the issuance of the work order as well as the order dated 13.07.2021 passed by this Court. This Court had given an opportunity to the Respondent No.7 to file an affidavit vide an order dated 07.11.2023 and in pursuance thereto, the affidavit was filed by the Respondent No.7. This Court has also duly perused the contents of the said affidavit which shows that on the basis of the Letter of Acceptance dated 02.07.2021, the agreement entered into on 07.07.2021 and as the resources were available, the Respondent No.7 proceeded with the work i.e. plantation of approximately 10,559 numbers of trees along the designated route. However in the said affidavit-in-opposition, it is not clear as to whether the Respondent No.7 took steps to proceed with the work pursuant to the order dated 13.07.2021. The report of the Divisional Forest Officer, Social Forestry Division, Barpeta so enclosed in respect to the Package No.2 also shows that approximately 10,559 numbers of trees were planted but when the same were planted is not known. Be that as it may, the said report is dated 31.12.2021. This Court also finds it relevant at this stage to take note of the scope of the work in question taking into account that the contract was for 5 (five) years from the date of issuance of the work order. Clause 1.27 of the said tender document stipulates different stages at which the payment shall be made to the contractor for the different types of forestry works. From a perusal of the Clause 1.27, it reveals the stages which were (I) Nursery, (II) Raising Plantation: Advance work, Creation and Maintenance during the first year; (III) Raising Plantation: Maintenance during the second year; (IV) Raising

Plantation: Maintenance in the third year; (V) Raising Plantation: Maintenance in the fourth year; and (VI) Raising Plantation: Maintenance in the fifth year. Surprisingly, although more than two years have elapsed pursuant to the issuance of the work order on 12.07.2021, the affidavit so filed by the Respondent No.7 on 09.11.2023 is completely silent in respect to the works pertaining to the first year, second year and even in the third year.

24. This Court had also enquired with the learned Standing counsel appearing on behalf of the Forest Department as to whether any payment has been made to the Respondent No.7 pursuant to the work done. The learned Standing counsel, Mr. D. Gogoi has specifically submitted that no payment has been made in view of the pendency of the instant writ petition and the interim order so passed.

25. In the backdrop of the above, let this Court further analyze the interim order which was passed by this Court on 13.07.2021 and continued thereafter. The specific words used in the said order are "Till the next date, the status quo in respect of the contractual job shall be maintained as on today". The expression "status quo" is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. In **Black's Law Dictionary, 11th Edition**, the term "status quo" has been defined as a situation that currently exists. The Supreme Court had in the case of **Messrs Bharat Coking Coal Limited Vs. State of Bihar and Others reported in 1987 (Supp) SCC 394** observed that the term "status quo" implies the existing state of things at any given point of time. It is however relevant to take note of that in the said judgment, the Supreme Court was dealing with the term "status quo as in the High Court". The Supreme Court explained that the qualifying words "as in the High Court" clearly limited

the scope and effect of status quo order and observed that the "status quo as in the High Court" would mean status quo as existing when the matter was pending in the High Court before the judgment was delivered. The Division Bench of Patna High Court in the case of **Manju Kumari Vs. State of Bihar and Others reported in 1995 SCC OnLine Pat 307** had opined that the term "status quo" means a condition or state of affairs as existing at that time should be maintained and the same should not be disturbed. The Gujarat High Court in the case of **Kiran N. Gajjar Vs. Official Liquidator of Parimal Financial Services Ltd. and Another reported in 2006 SCC OnLine Guj 257** observed that once an order of injunction or status quo was passed by a competent Court, the parties are bound to maintain status quo in respect to the suit property as existing on that date when the order was passed and any dealing with the property in question when the order of status quo granted by a competent Court was subsisting, was bad in law.

26. In the backdrop of the above, if this Court takes into account the order passed by this Court on 13.07.2021, it would be seen that this Court had directed that the status quo be maintained as on 13.07.2021 in respect to the contractual job and therefore, the Respondent No.7 could not have proceeded with the work order dated 12.07.2021 w.e.f. 13.07.2021. The conduct of the official respondents also portrays the same picture inasmuch as the official respondents have not stated in their affidavit as regards carrying out of any work in pursuance to the issuance of the work order and furthermore no payment was also made in respect to the alleged work done by the Respondent No.7.

27. In the backdrop of the above, the question therefore arises as to

whether this Court should interfere with the granting of the contract in respect of the Package No.2 in favour of the Respondent No.7. As already observed hereinabove, the granting of the contract in favour of the Respondent No.7 was contrary to the communication dated 27.07.2020 as well as the corrigendum dated 23.01.2021 in view of the fact that the Respondent No.7's quoted rate was 10% below the estimated rate. The only way the Respondent No.7 could have been awarded the contract was by recording reasons as regards the existence of peculiar situations and special circumstances. This Court supra had already observed that the records upon being perused revealed nothing which would show that there was any recording of any findings as regards the existence of peculiar situations and special circumstances. This Court at this stage also finds it relevant to observe that vide the corrigendum dated 23.01.2021, the necessity of existence of peculiar situations and special circumstances was made a condition of the contract. Under such circumstances, if without there being peculiar situations and special circumstances, the contract is awarded in favour of a person who had quoted below 10% of the estimated result, it would result in unfairness to the other tenderers who on the basis of the corrigendum did not quote rate below 5%. This unfairness would result in violation of Article 14 of the Constitution and accordingly, in the opinion of this Court the award of the contract in favour of the Respondent No.7 in respect of the Package No.2 is liable to be interfered with. Accordingly, this Court therefore sets aside the letter of acceptance dated 02.07.2021, the contract agreement dated 07.07.2021 as well as the work order dated 12.07.2021.

28. A further question also arises in view of the relief claimed by the Petitioner that the work in question should be awarded to the Petitioner. The



record reveals that amongst the 8 tenderers, 6 other tenderers were technically qualified and had quoted the same rate. However, those 6 other tenderers are not made parties to the instant writ petition and in their absence, issuing a direction to the Respondents to award the contract to the Petitioner would not be in the interest of justice and accordingly, this Court therefore is not inclined to pass any order directing the Respondents to award the contract in respect of package No.2 to the Petitioner.

29. Accordingly, the instant writ petition therefore stands disposed of thereby setting aside and quashing the award of contract in respect of Package No.2 of Roadside Plantation (Avenue & Median) of National Highway at NH-31(C)(New 27) stretch – from Km 993 to 1003 of AS08 in favour of the Respondent No.7. Consequently, the Letter of Acceptance dated 02.07.2021; the agreement dated 07.07.2021 as well as the notice to proceed with the work dated 12.07.2021 are also set aside and quashed. Liberty, however is granted to the Respondent Authorities to take such further decision in respect to the contract work in question in the public interest.

30. In the facts of the instant case, this Court is not inclined to impose any costs.

JUDGE

Comparing Assistant