



GAHC010036982023

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

**Case No. : WP(C)/1010/2023**

M/S ROYAL BNILLP (JV) AND 4 ORS.  
(A JOINT VENTURE OF ROYAL INFRACONSTRU LIMITED AND BN  
INFRAPROJECTS LLP) HAVING ITS OFFICE AT AMBAGAN ROAD, BYE  
LANE, NEAR MADHUBAN FACTORY, TEZPUR-784001, DIST-SONITPUR,  
ASSAM AND REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE-  
BABUL NATH, S/O LATE MANORANJAN NATH, R/O VILL-POLICE LINE,  
TEZPUR, SONITPUR-784001

2: M/S ROYAL INFRACONSTRU LIMITED  
A LIMITED COMPANY HAVING ITS REGISTERED OFFICE AT GODREJ  
WATER SIDE BUILDING TOWER NO. 1  
4TH FLOOR  
NO. 401  
PLOT NO. 5  
DP BLOCK  
SALT LAKE SECTOR V  
KOLKATA  
WEST BENGAL-700091  
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE  
NAMELY  
SUJIT KUMAR MANDAL  
AGED ABOUT 48 YEARS  
S/O LATE HARADHAN MANDAL  
R/O GODREJ WATER SIDE BUILDING TOWER NO. 1  
4TH FLOOR  
NO. 401  
PLOT NO. 5  
DP BLOCK  
SALT LAKE SECTOR V  
KOLKATA  
WEST BENGAL-700091

3: M/S BN INFRAPROJECTS LLP  
A LIMITED LIABILITY FIRM REGISTERED UNDER THE LLP RULES



2009  
HAVING ITS REGISTERED OFFICE AT AMBAGAN BYE LANE  
NEAR MADHUBAN FACTORY  
TEZPUR  
DIST-SONITPUR-784001  
ASSAM AND REPRESENTED BY ITS DESIGNATED PARTNERS  
NAMELY- MR. BABUL NATH  
S/O LATE MANORANJAN NATH  
AGED ABOUT 44 YEARS  
R/O VILL-POLICE LINE  
TEZPUR  
SONITPUR-784001  
ASSAM

4: BABUL NATH  
(DESIGNATED PARTNER OF M/S BN INFRAPROJECTS LLP)  
S/O LATE MANORANJAN NATH  
AGED ABOUT 44 YEARS  
R/O VILL-POLICE LINE  
TEZPUR  
SONITPUR-784001  
ASSAM

5: MS. SHARMISTHA NATH  
W/O SRI BABUL NATH  
R/O TEZPUR TOWN  
WARD NO. 12  
SONITPUR  
ASSAM

6: PRANAB NATH  
S/O LATE MANORANJAN NATH  
R/O VILL- EX-POLICE LINE  
TEZPUR-784001  
SONITPUR  
ASSA

VERSUS

THE UNION OF INDIA AND 2 ORS  
REPRESENTED BY THE GENERAL MANAGER/COON, N.F. RAILWAY,  
MALIGAON, GUWAHATI-781011

2:THE CHIEF ENGINEER/CON-5  
N.F. RAILWAY  
MALIGAON  
GUWAHATI-781011



3:THE FINANCIAL ADVISOR AND CHIEF ACCOUNTS OFFICER  
N.F. RAILWAY  
MALIGAON  
GUWAHATI-78101

**Advocate for the Petitioner** : MR. M BISWAS

**Advocate for the Respondent** : DY.S.G.I.

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**Date** : 26-04-2023

### **Judgment & Order**

The extraordinary powers conferred by Article 226 of the Constitution of India is being sought to be invoked by means of filing this writ petition. The petitioners have put to challenge the action of the respondents-Railways in rejecting the Techno-Commercial bid of the petitioner no. 1 in connection with a Tender process initiated vide NIT dated 13.10.2022. The petitioners alleged that such rejection has been done in a most mechanical manner and without any application of mind which has caused immense legal prejudice to the petitioners. The petitioners further state that in a similar Tender, the petitioner no. 1, who had submitted the bid, was declared to be technically responsive. The petitioners have, accordingly prayed for interference by this court with the impugned action of the respondent authorities.

**2.** Before going to the issue which would require an adjudication, the facts of the case may be put in brief as follows.

**3.** The petitioner no. 1 is a Joint Venture of M/S Royal Infraconstru Ltd. and M/S BN Infraprojects LLP. The Joint Venture as well as the constituents of the same and the partners of the LLP are all arrayed as petitioners. It is the case of the petitioners

that on 13.10.2022, the Railways had published an NIT for the work, namely, "Construction of substructure & superstructure of Br. No. 184/A-1 of span 1x62.0m Bow String Girder + via duct 2x24.0m Composite Girder (ROB) at Chainage 162.562 Km (Over State Highways) between station Gauripur-Alamganj in connection with New Maynaguri-Jogighopa new B.G. Line Project of NF Railway". The Tender process was a two bid one - Financial and Technical. The problem which had arisen concerns Annexure-V of the Tender Document. As per the footnote of the said Annexure-V, it has been stated that the Certificate was to be given by each member of the JV or partners of the partnership firm/LLP/ etc. It is the case of the petitioners that since the petitioner no. 1, which had submitted the bid, is a Joint Venture, the said certificate was given by both the members of the Joint Venture. As regards the constituent of the Joint Venture, namely, M/S Infraprojects LLP, Shri Babul, Nath had signed the said certificate. It is on this reason/ground that the Techno-Commercial bid of the petitioner no.1 has been rejected.

**4.** On the other hand, as per the version of the respondents-Railways, the rejection has been done in terms of the conditions of the NIT and there is no legal infirmity.

**5.** I have heard Shri M Biswas, learned counsel for the petitioners. Also heard Shri K Gogoi, learned counsel appearing for the Railways.

**6.** The materials placed before this Court have been carefully examined.

**7.** Shri Biswas, the learned counsel for the petitioners has drawn the attention of this Court to the guidelines and conditions to be fulfilled in case, the bidder is a Joint Venture. Under Clause 1.11, 'authorized member' has been explained to mean that the Joint Venture members in the JV MoU shall authorise one of the members on behalf of the Joint Venture to deal with the Tender etc. It has further been stipulated that all



notices/correspondences with respect to the contract would be sent only to this authorized member of the JV.

**8.** Reference has also been made to Clause 1.14.4 which stipulates a case where one or more members of the Joint Venture is/are LLP firms. Amongst others, under sub-clause (iv), a copy of the authorization/copy of Power of Attorney issued by the LLP firm which is to be supported by a resolution passed by the partners in favour of the individual to sign the Tender and/or signed the MoU/Joint Venture agreement on behalf of the LLP and create liability against the LLP are required to be submitted. There is also a requirement under sub-clause (v) of submitting an Undertaking by all partners of the LLP that they are not blacklisted by the Railways or any other Ministry of the Department of the Government of India. It is the case of the petitioner that such declaration has been given by a communication dated 15.11.2022 signed by all the partners of the LLP.

**9.** Reference has also been made to Clause 1.4 as per which, the Tender was to be purchased and submitted only in the name of the JV and not in the name of any constituent member. It is further been stipulated that the Tender Form can, however, be submitted by the Joint Venture or any of its constituent member or any person authorized by the Joint Venture through Power of Attorney to submit the Tender.

**10.** Shri Biswas, learned counsel for the petitioners submits that the LLP agreement was entered into on 01.04.2021 followed by the Joint Venture Agreement on 12.11.2022. On 12.11.2022, the Company had authorized Shri Babul Nath to act on its behalf and on the previous date i.e., 11.11.2022, the LLP had also authorized Shri Babul Nath to act on its behalf. The learned counsel has also drawn the attention of the format of Annexure-V which was required to be filled up and submitted along with the Tender. Reference has also been made to paragraph 7 of the said format as well

as the footnote which reads as follows:

*“7. I/we certify that I/we the Tenderer(s) is/are not blacklisted or debarred by Railways or any other Ministry/Department of Govt. of India from participation in Tender on the date of submission of bids, either in individual capacity or as a HUF/ member of the partnership firm/LLP/JV/Society/Trust.*

*This certificate is to be given by each members of JV or Partners of Partnership firm/LLP/etc.”*

**11.** Shri Biswas, learned counsel for the petitioners, accordingly submits that all the requirements of the Tender process were fulfilled by the petitioners and therefore, the rejection is done without proper application of mind and accordingly, may be, interfered with. He further submits that in a similar condition, the bid of the same petitioner no. 1 has been accepted by the Railways with identical clause and therefore, there is no reason as to why the bid of the petitioner no. 1 submitted in the present process should not be accepted.

**12.** *Per contra*, Shri K Gogoi, learned counsel representing the Railways has strenuously opposed the writ petition. He submits that the rejection of the bid of the petitioners at the technical stage has been done in accordance with law and by following the requirement of the Tender conditions. By referring to the Limited Liability Partnership Act, 2008, the learned counsel for the Railways has placed reliance upon Sections 7 and 8 thereof, which are with regard to designated partners and liabilities. Reference has also been made to Sections 2 (q) and 5 concerning partner. Section 26 has also been referred by which a partner has been termed as an agent. By referring to the prayer made in this writ petition, the learned Railway Counsel submits that the

same are not tenable in law and therefore, the writ petition itself is liable to be dismissed. In support of his submissions, Shri Gogoi, learned CGC, places reliance upon the following case laws:

**i) *Jagdish Mandal Vs. State of Orissa & Ors.*, (2007) 14 SCC 517,**

**ii) *Montecarlo Ltd. Vs. National Thermal Power Corporation Ltd.*, (2016) 15 SCC 272,**

**iii) *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr.*, (2016) 16 SCC 818,**

**iv) *Caretel Infotech Ltd. Vs. Hindustan Petroleum Corporation Ltd. & Ors.*, (2019) 14 SCC 81,**

**v) *M/S Agmatel India Pvt. Ltd. Vs. M/S Resoursys Telecom*, (2019) 14 SCC 81,**

**vi) *Silppi Constructions Contractors Vs. Union of India & Anr.*, (2020) 16 SCC 489,**

**vii) *Vidarbha Irrigation Development Corporation & Ors. Vs. Anoj Kumar Agarwala & Ors.*, (2020) 17 SCC 577,**

**viii) *NG Projects Ltd. Vs. Vinod Kumar Jain & Ors.*, (2022) 6 SCC 127, and**

**13.** The case of *Jagdish Mandal* (*supra*) has been relied upon to buttress the submission regarding the limited role of a writ court exercising powers of judicial review. It has been reiterated that it is only the legality of the decision and not the soundness which can be matters of such judicial review.

**14.** In the case of **Montecarlo Ltd.** (*supra*), the Hon'ble Supreme Court has again laid down a caveat on the exercise of judicial review in contractual matters. It has also been laid down that the owners should be allowed to carry out the purpose and there should be free play in the joints.

**15.** The case of **Afcons Infrastructure Ltd.** (*supra*) has been relied upon in support of his submission that interpretation of the Tender clauses are to be best left to the authorities, as owners are the best interpreters. For the same purpose, the case of **Silppi Constructions Contractors** (*supra*) and **Caretel Infotech Ltd.** (*supra*) have been cited. In the case of **Vidarbha Irrigation Development Corporation** (*supra*), it has been stated that essential conditions of the Tender are required to be complied with.

**16.** In the case of **M/S Agmatel India Pvt. Ltd.** (*supra*), the Hon'ble Supreme Court has again reiterated that the author of the Tender document would be the best person to interpret the same.

**17.** The case of **NG Projects Ltd.** (*supra*) has been cited again to highlight the aspect of restraint in exercise of judicial review. The aforesaid case was, however decided on the basis of the amended provision of the Specific Relief Act, 1963.

**18.** Shri Gogoi, learned counsel for the Railways, accordingly submits that the footnote of Annexure-V has not been fulfilled and therefore, the rejection of the technical bid of the petitioners has been rightly done.

**19.** Rejoining his submission, Shri Biswas, learned counsel for the petitioners has contended that the situation of a LLP and a Company are almost identical. He submits that the interpretation sought to be given to the footnote would be against the



statute. By referring to the LLP Act, more specifically section 2 (d), which defines body corporate, it is submitted that in view of such provision in the statute, the interpretation sought to be given by the respondents would be wholly unreasonable which would require correction.

**20.** Shri Biswas, learned counsel submits that the decisions cited by the Railways would not come to their aid and actually there is no dispute with the proposition laid down. He submits that though ordinarily, the interpretation given by the owner/author would be relevant, in the instant case, it is with regard to the meaning of the footnote and the object sought to be achieved by such insertion. As regards the case of **NG Projects Ltd. (supra)**, he submits that the said case was on an entirely different context, namely, the Specific Relief Act which, after its amendment, is to be confined only to infrastructure projects. He submits that the same quorum of Hon'ble Judges in the subsequent decision of **Jai Bholenath Construction Vs. The Chief Executive Officer, Zilla Parishad, Nanded & Ors.**, dated 18.05.2022 in Civil Appeal No. 4140/2022 (Special Leave Petition(C) No.7150/2022) has diluted the rigours laid down in the case of **NG Projects Ltd. (supra)**.

**21.** In support of his submission, Shri Biswas, learned counsel for the petitioners places reliance upon the following case laws:

- i) **Nabha Power Ltd. Vs. Punjab State Power Corporation Ltd., (2018) 11 SCC 508** and
- ii) **Sumesh Engineers Pvt. Ltd. Vs. Madhya Gujarat VIJ Company Ltd.**, dated 06.05.2022.

**22.** In the case of **Nabha Power Ltd. (supra)**, the Hon'ble Supreme Court referred to a decision of the Hon'ble Privy Council in the case of **Attorney General of Belize**

**& Ors. Vs. Belize Telecom Ltd. & Anr.,** reported in **(2009) 1 WLR 1988**. For ready reference, the relevant paragraph is extracted hereinbelow:

*‘45. Once again, Lord Hoffmann, now sitting on the Privy Council, in Attorney General of Belize v. Belize Telecom Ltd., dealt with the implied terms of the contract in the context of the articles of association of a company. It has been observed as under:*

*“16. Before discussing in greater detail the reasoning of the Court of Appeal, the Board will make some general observations about the process of implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed: see Investors Compensation Scheme Ltd. v. West Bromwich Building Society, WLR pp. 912-13. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument.*

...

...

*21. It follows that in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be*

*understood to mean. It will be noticed from Lord Pearson's speech that this question can be reformulated in various ways which a court may find helpful in providing an answer—the implied term must "go without saying"; it must be "necessary to give business efficacy to the contract" and so on—but these are not in the Board's opinion to be treated as different or additional tests. There is only one question: is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?*

...

...

*26. In B.P. Refinery (Westernport) Proprietary Ltd. v. Shire of Hastings, CLR pp. 282-83 Lord Simon of Glaisdale, giving the advice of the majority of the Board, said that it was "[not] necessary to review exhaustively the authorities on the implication of a term in a contract" but that the following conditions ("which may overlap") must be satisfied:*

*'(1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that "it goes without saying"; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract.'*

**23.** In the case of ***Sumesh Engineers Pvt. Ltd.*** (*supra*), the parameters of exercise of judicial review has been laid down.

**24.** The rival submissions made by made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

**25.** To address the issue, which has arisen for consideration, the legal provision, as

laid down in the Limited liability Partnership Act, 2008, is required to be examined.

**26.** Section 3 of the Act of 2008 makes it clear that a limited liability partnership is a body corporate, having perpetual succession and that any change in the partners shall not affect the existence, rights or liabilities of the limited liability partnership.

**27.** Section 7 of the Act defines designated partners, as per which every limited liability partnership shall have at least two designated partners who are individuals and at least one of them has to be a resident in India. Section 8 is with regard to the liabilities of designated partners. It lays down that a designated partner shall be responsible for bringing of all acts, matters and things which are required to be done by the limited liability partnership in compliance of the provisions of this Act.

**28.** The effect of registration has been laid down in section 14 and as per Section 26, every partner of a limited liability partnership is, for the purpose of business, an agent of the LLP and not for the other partners. The extent of liability has been laid down in Section 27.

**29.** The bone of contention in this case is Annexure-V which is the format of the certificate to be submitted along with the Tender documents. A bare look at the format would show that the same is required to be signed by a person who is appointed as the attorney/authorised signatory of the Tenderer. There is neither any requirement nor even it is possible for the said format to be signed by all the other partners. This Court also finds force in the submission made on behalf of the petitioners that all the documents submitted are signed by all the partners and only the Tender documents were submitted by Shri Babul Nath.

**30.** This Court finds force in the submission made on behalf of the petitioners that

as per the requirement of Annexure-V, the signature has to be of the Attorney or authorised signatory which cannot be more than one for a Tenderer which, in the instant case, is the Joint Venture. This Court also accepts the submission of the petitioners that signature of any Director or shareholder or partners of any of the constituents in Annexure-V may also amount to a false declaration as, such person may not be Attorney or authorised signatory of the Tenderer. Further, as per Clause 1.11 of Appendix-II, in case of a Joint Venture, one member would be authorised to act on behalf of the Joint Venture and all the partners are not required to sign all the papers. In any case, it is on record that each partner of the JV has given the declaration and the requirement is not by all the partners of the LLP which, in this case, is a constituent of the Joint Venture. It is further on record that the LLP had executed a Power of Attorney in favour of Shri Babul Nath who is one of the designated partners of the LLP to sign the Tender documents.

**31.** This Court also finds force in the contention made on behalf of the petitioners that in a similar Tender, the petitioner no. 1, who had submitted the bid, was declared to be technically responsive. In this regard, a specific averment has been made in paragraph 13 supported by Annexure-21 relating to Tender No. CE/CON/N-K/MIS-2022-09. When the respondent Railways have taken a stand to accept the Tender of a similar nature from the petitioner no. 1, there cannot be any justification for rejection of the present Tender on a technical ground.

**32.** This Court is of the opinion that the alleged ground on which the technical bid of the petitioner no. 1 has been sought to be rejected appears to be a hyper technical one and no objective appears to have been achieved by such rejection. Rather, the entire concept of maintaining transparency and fairness in the matter of distribution of State largesse seems to be overlooked as, by the impugned action, competition would be reduced on the financial aspect which would be against the interest of public.



**33.** In view of the aforesaid discussions, this Court is of the unhesitant opinion that the rejection of the Techno-Commercial bid of the petitioner no. 1 vide email dated 07.02.2023 is unsustainable in law and accordingly, the same is set aside and quashed. Consequently, the bid of the petitioner no. 1 is directed to be held as technically responsive and accordingly, be considered for the financial evaluation after which, the work may be allotted to the successful bidder in accordance with law.

**34.** The writ petition, accordingly stands allowed. No order as to costs.

**JUDGE**

**Comparing Assistant**