

GAHC040007202023



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

Case No. : WP(C)/255/2023

M/s Khenewa Group
Having its Office at Waii Complex, Abotani Colony, Itanagar, Arunachal Pradesh
791110.
Represented by its Proprietor Shri Rumak Jomoh,
S/o Shri Sam Jomoh, near Rajdhani Petrol Pump, A Sector, Naharlagun, Papumpare
District, Arunachal Pradesh, PO/PS Naharlagun, Arunachal Pradesh.
Mob. No. 9402915867

VERSUS

THE STATE OF AP and 3 Ors.
Represented by the Secretary, Women and Child Development, Govt. of Arunachal
Pradesh, Itanagar, PO/PS Itanagar.

2:the Director, Women and Child Development Department, Govt. of Arunachal
Pradesh, Itanagar, PO/PS Itanagar
Age: 0 Occupation :

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

4:the Chairperson Tender Selection Committee, C/o Director, Women and Child
Development Department, Govt. of Arunachal Pradesh, Itanagar, PO/PS Itanagar
Age: 0 Occupation

Advocate for the Petitioner : Hage Lampu

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA
ORDER**

Date : 08.08.2023

Heard Mr. Hage Lampu, learned counsel for the petitioner. Also heard Mr. Ninnong Ratan, learned Addl. Advocate General, Arunachal Pradesh, appearing on behalf of all the respondents.

Pursuant to the Notice Inviting e-Tender, dated 02.03.2023, issued by the Director, Department of Women and Child Development, Government of Arunachal Pradesh, Itanagar, vide Memo. No. DWCD-14/9/2022, inviting bid in 2 bids i.e. Technical and price bid separately from the intending supplier of repute with past experiences in the field and sound financial capability for supply of Medicine Kits, for supply of 12450 medicine kits @ 2(two) kits per centre, at an estimated cost of Rs. 186.75 lakhs; the petitioner along with others, had submitted their bids, whereafter, a summary of the technical bid evaluation was prepared on 06.04.2023, annexed as Annexure-4 of the writ petition, wherein, a technical evaluation of the bids submitted by as many as 5(five) bidders were made whereafter, it was found that the samples submitted by the petitioner, was as per the specification mentioned in the bid documents of the medicines kit and other 4(four) bidders were not qualified due to its shortcomings. Therefore, the Board recommended for re-tender of the Notice Inviting e-Tender, in question, as the bid of a single bidder cannot be taken further for opening of financial bid as per Rule 144 and 173(xix) of the General Financial Rules, 2017. The petitioner is aggrieved by the aforesaid recommendation of the Board in its meeting held on 06.04.2023, whereby, re-tender for the Notice Inviting e-Tender, in question, has been recommended to the higher authority in terms of Rule 144 and 173(xix) of the General Financial Rules, 2017.

The petitioner is also aggrieved by the order, dated 26.04.2023, issued by the Secretary, Department of Women and Child Development, Government of Arunachal Pradesh, Itanagar, vide Memo. No. DWCD-14/9/2022, whereby, the recommendation of the Tender Committee for re-tender of the aforesaid Notice Inviting e-Tender, has been approved.

Though an affidavit-in-opposition has been filed by the State Respondents contesting the case; Mr. Ratan, learned Addl. Advocate General, Arunachal Pradesh, however, has submitted that since the provisions of the General Financial Rules, 2017, is applicable in the matter of procurement of goods and services, this writ petition may be disposed of by setting aside the orders put to challenge, herein, by the petitioner and thereafter, providing the State Respondents to open the financial bid of the petitioner and if upon evaluation of the financial bid submitted by the petitioner, the requirement of Rule 173(xx)(c) of the General Financial Rules, 2017, is fulfilled; the petitioner's financial bid may be considered in accordance with law.

Rule 173(xx)(c) of the General Financial Rules 2017, reads, as under:

“173(xx) Lack of competition in Rule 173(xix) shall not be determined solely on the basis of the number of Bidders. Even if when only one Bid is submitted, the process may be considered valid, provided following conditions are satisfied:

- (a)
- (b)
- (c) prices are reasonable in comparison to market value.”

The proposal put-forward by Mr. Ratan, learned Addl. Advocate General, Arunachal Pradesh, as above, has been agreed to by Mr. Lampu, learned counsel for the petitioner, as according to him also; the provisions of the General Financial Rules, 2017, is applicable in the matter of procurement of goods and services.

Accordingly, in view of the agreement reached between the parties; this writ petition shall stand disposed of, by setting aside the summary of the technical bid evaluation, made by the Board on 06.04.2023(Annexure 4 to the writ petition), recommending re-tender of the Notice Inviting e-Tender, in question, as per Rule 144 and 173(xix) of the General Financial Rules, 2017; and the order, dated 26.04.2023(Annexure 5 to the writ petition), issued by the Secretary, Department of Women and Child Development, Government of Arunachal Pradesh, Itanagar, approving the recommendation of the Board for re-tender vide the technical bid evaluation made on 06.04.2023, with a further direction to the respondent authorities to open the financial bid of the petitioner submitted pursuant to the Notice Inviting e-Tender, dated 02.03.2023, issued by the Director, Department of Women and Child Development, Government of Arunachal Pradesh, Itanagar, for procurement of 12450 medicine kits and upon evaluation of the petitioner's financial bid; if it is found that the financial bid submitted by the petitioner fulfills the requirements under Rule 173(xx)(c) of the General Financial Rules 2017; the bid submitted by the petitioner may be considered appropriately, in accordance with law.

It is hereby ordered accordingly.

The writ petition stands disposed of, in terms above.

Interim order passed by the Court, earlier, if any, stands vacated.

JUDGE

Comparing Assistant