

GAHC010011302023



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

Case No. : WP(C)/285/2023

M/S G.B CONSTRUCTION
H NO. 5C, 5 TH FLOOR, SUBHAM RED STONE BUILDING, RUKMINIGAON,
GS ROAD, GUWAHATI- 781036, REP. BY ITS PROPRIETOR SRI GANESH ROY
MEDHI

VERSUS

THE GUWAHATI MUNICIPAL CORPORATION AND 2 ORS
BHANGAGARH, GHY- 05, REP. BY ITS COMMISSIONER

2:THE COMMISSIONER
GMC
BHANGAGARH
GHY- 05

3:THE CHIEF ENGINEER
GMC
BHANGAGARH
GHY- 0

Advocate for the Petitioner : MR. A K BARUAH

Advocate for the Respondent : SC, GMC

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20-01-2023

Heard Mr. A.K. Baruah, learned counsel for the petitioner as well as Mr. P. Nayak, learned standing counsel for the respondents.

2. The case of the petitioner is that the respondent no.2 had published a short NIT/ invitation for bids, amongst others, for “cleaning and desilting of 4 nos. of major river channels i.e. Bahini River, Bharalu River, Mora Bharalu channel and Basistha River.”

3. The said works were divided into five packages. In the present case, the petitioner had participated only in respect of package III and IV only. Package III is for Bharalu River and Package IV is for Mora Bharalu River for the year 2022-23.

4. The case of the petitioner is that the technical bids were opened on 07.01.2023 where the petitioner had participated as a technically qualified bidder. On 09.01.2023, the technical as well as financial bid were evaluated where the petitioner emerged to be the lowest eligible bidder in respect of Package III and IV.

5. On 13.01.2023, a news article was published in a local newspaper where some allegations were leveled against the petitioner. On the same date, i.e. on 13.01.2023, the respondent authorities issued a tender cancellation notice and on the same day a fresh tender process was issued.

6. Accordingly, the impugned action of issuing a fresh tender notice by cancelling the previous NIT dated 20.12.2022 has been assailed and this writ

petition has been filed under Article 226 of the Constitution of India.

7. The learned counsel for the petitioner has submitted that as the price bid of the petitioner was opened and the rates quoted by the petitioner has been made public and therefore, the petitioner would suffer irreparable prejudice in the re-tendering process as their quoted rates in the previous tender is already in public domain. It was also submitted that the respondents had acted in haste without making any attempt to verify the news article which appeared in a section of newspapers.

8. Hence, it is submitted that as the price bid of the petitioner is known, their competitors would have gained an undue advantage upon the petitioner. Hence, it is submitted that the cancellation process has infringed the fundamental right of the petitioner to be treated fairly in tendering process and accordingly, it has also adversely hampered his right to do business.

9. The matter was previously listed on 19.01.2023 and the learned standing counsel for the respondents had taken time to obtain necessary instructions. Accordingly, the matter was adjourned and the matter has been listed again today for motion. The learned standing counsel for the respondents has submitted that during the pendency of the tendering process a corrigendum was issued vide no. GER/DIV-V/144/2022/07 dated 28.12.2022 which had made some alterations to the conditions of the tender which included reduction of certain financial base lines including eligible conditions of having average annual financial turnover. It is submitted that the said corrigendum was inadvertently

not uploaded in the website and therefore, all the prospective tenders had not been put to notice about the changed financial parameters of the tender.

10. The relevant changes brought about in the corrigendum dated 28.12.2022 is quoted below:

No.GER/DIV-V/144/2022/07

Dated:28/12/2022

Corrigendum

Ref No. GER/DIV-V/144/2022/01 Dated:19/12/2022

Name of Work:-"Cleaning and de-siltation Bahini River/Bharalu/ Mora Bharalu/Basistha River under Guwahati Municipal Corporation for the year 2022-23".

It is for information to all the respective bidders of the above referred work under Guwahati Municipal Corporation that certain corrections have been made in the bid document of this tender. The detailed corrections are mentioned below:

- 1. Under clause 4.3(h) Evidence of access to line(s) of credit and availability of other financial resources facilities which was 100% is now reduced to 30% of Contract value, certified by the Bankers (Not more than 6 months old).*
- 2. Under clause 4.3 (i) Undertaking that the bidder will be able to invest a minimum cash of 45% of contract value of work (which was early mentioned as 100 %), during implementation of the work.*
- 3. Under clause 4.3 (p) is now read as List of Tools and Plants proposed to be used in the implementation of the work (owned or valid hired) should be duly tested and certified by a Govt. Engineer/ Engineer of GMC not less than in the rank of Executive Engineer.*
- 4. Under clause 4.4A (a) Achieved a minimum average annual financial turnover (in all classes of civil engineering works only) of ½ times (which was early mentioned as 1½ times) the estimated package value.*
- 5. Under clause 4.4A (c) satisfactorily completed (is now read as not less than 50% of contract value which was earlier mentioned as 75%), as a Prime Contractor, (or as Sub-Contractor duly certified by the employer) at least one similar work of value not less than 80% of the estimated package value.*

6. Under clause 39.1 is now read as Payments shall be adjusted for deductions for advance payments, retention, other recoveries in terms of the contract and taxes, at source, as applicable under the law. (others are deleted).

7. Under clause 39.2 is deleted.

8. Under clause 39.4 is added as after completion of awarded period the Bill will be made 100% for completed works. Whereas the payment will be made 75% of the completed works value and the rest will be paid after completion of maintenance period.

9. Under clause 43.2 is deleted.

10. Under the head of "Contract Data" subject Sl. No 10 additional clause 10(b) is added as "The payment will be made subject to the availability of fund."

Note: The other conditions as mentioned in tender documents remains the same."

11. It is further submitted that as the corrigendum was not uploaded in the website, there was insufficient receipt of tenders with a very low participation by the bidders. As per the instructions received, the participation status is as follows:

Package No	Numbers of Bids received	Bids received from
Package-I	NIL	N A
Package-II (River Channel)	1	(a) M/s Bharati Associates
Package-III (River Channel)	2	(a) M/s G.B. Construction
		(b) Samia Construction
Package-IV (River Channel)	2	(a) M/s G.B. Construction
		(b) Samia Construction

Package-V (River Channel)	1	(a) One to ten solution Pvt. Limited.

12. Thus it is seen that in connection with the requisite Package III and Package IV, though two bids were received for the said packages, after the technical evaluation, only the sole petitioner remained to be the sole bidder.

13. Accordingly, it is submitted that the non-uploading of the corrigendum has resulted in lack of competition in all the packages and therefore, for the said technical reasons the previous tendering process had to be cancelled. It is further submitted that as the desilting works is of great importance to prevent water logging in the city of Guwahati, the respondent authorities had to issue a fresh tender process immediately.

14. It is also submitted that in a tender process, there was no obligation in part of the authority to accept any of the tenders and it was open to the tendering authority to issue a fresh tender if there is no competition and in the said regard, reliance is placed in the case of *State of Jharkhand Vs. CWE Soma Consortium, (2016) 14 SCC 172*.

15. Be that as it may, in the present case in hand as the present tenders were cancelled owing to non-uploading of the corrigendum issued on 28.12.2022, the Court finds that the respondent authorities have good and sufficient reasons for not processing the previous tender process. Therefore, if in the process of cancelling of the tender, the rates quoted by the petitioner

have been divulged, the same must be accepted to be an inadvertent evil which has happened due to cancellation of the tendering process.

16. As the Court finds that the respondents have good and sufficient grounds for cancelling the previous tender process and issue a fresh tender, the Court does not find any reason to keep this matter pending as it would not serve any purpose, neither to the petitioner nor to the respondents.

17. Therefore by holding that there is no infirmity in the cancellation of the previous tender process, the Court is inclined to dismiss the writ petition at the motion stage without issuance of notice to the respondents.

18. The document produced by the learned standing counsel for the respondents is retained as a part of the record.

19. Without prejudice to the right of the petitioner, the petitioner is at liberty to participate in the re-tender process.

JUDGE

Comparing Assistant