

GAHC010013642023



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

Case No. : WA/13/2023

G R ENGINEERING PRIVATE LTD.
HAVING REGISTERED OFFICE AT POONAM CHAMBERS A WING 2ND
FLOOR DR AB ROAD WORLI MUMBAI 400018 MAHARASHTRA

VERSUS

TECHNIP ENERGIES INDIA LTD. AND 3 ORS.
HAVING ITS OFFICE AT TECHNIP TOWER A-4 SECTOR 1 NOIDA UTTAR
PRADESH 201301

2:UNION OF INDIA THROUGH MINISTRY OF PETROLEUM AND NATUAL
GAS HAVING ITS OFFICE AT A WING SHASTRI RAJENDRA PRASAD ROAD
110001 AZAD BHAWAWAN ROAD IP ESTATE NEW DELHI DELHI-110002

3:NUMALIGARH REFINERY LTD. THROUGH ITS MANAGNG DIRECTOR
HAVING REGISTERED OFFICE AT 122A GS ROAD CHRISTIAN BASTI
GUWAHATI-781005 AND ALSO HAVING OFFICE AT GOLAGHAT
NUMALIGARH ASSAM

4:M/S THYSSENKRUPP INDUSTRIAL SOLUTION (INDIA) PRIVATE LTD.
THROUGH ITS PROJECT PROCUREMENT MANAGER HAVING ITS
REGISTERED OFFICE AT UHDE HOUSE LAL BAHADUR SHASTRI MARG
VIKHROLI WEST MUMBAI 400083 INDI

Advocate for the Petitioner : DR. ASHOK SARAF

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

– B E F O R E –
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 25-01-2023

[(N. Kotiswar Singh, CJ (Acting))]

Heard Dr. A. Saraf, learned senior counsel, assisted by Mr. P. Baruah, learned counsel for the appellant. Also heard Mr. D. Das, learned senior counsel, assisted by Mr. K. Talukdar, learned counsel appearing for the respondent No.1, Ms. R. Devi, learned Central Government Counsel, appearing for the respondent No.2 and Mr. N. Deka, learned counsel, appearing for the respondent No.3.

2. The present appeal has been preferred against the order dated 06.01.2023 passed by the learned Single Judge in WP(C) No.96/2023, by which the learned Single Judge, after making certain observations on the basis of the submissions made by the learned counsel for the respondent No.3 herein (respondent No.2 in the writ petition) that he has received instructions to the effect that the price bid could be opened after receiving the password from the petitioner, has disposed of the petition with the following order:-

“Heard Mr. D. Das, learned senior counsel, assisted by Mr. A. Khanna, learned counsel for the petitioner as well as Ms. R. Deuri, learned CGC appearing for the Union of India and Mr. N. Deka, learned counsel for respondent no.2.

2. Aggrieved by the reasons for which the price bid of the petitioner in connection with tender floated by the Numaligarh Refinery Ltd. for the development of “Reactor and Regenerator (RXRG Package)” for the Numaligarh Refinery Expansion Project (NERP) issued by the respondent no.2 though the respondent no.3, the present writ petition has been filed under Article 226 of the Constitution of India.

3. Without entering into merit of the writ petition and the submissions and counter submissions made by the learned senior counsel for the petitioner and the learned counsel for the respondent nos. 2, it would suffice to record herein that on a pointed query of the Court, upon

instruction, the learned counsel for respondent no.2 has submitted that he has received instruction to the effect that the price bid of the petitioner could be opened after receipt of the password from the petitioner. Accordingly, it appears that it is not in dispute that before the rejection of the price bid of the petitioner by impugned order i.e. e-mail dated 02.01.2023 at 10.03 AM, the respondent authorities had been able to open the price bid submitted by the petitioner.

4. *Under such circumstances, as the rejection order has preceded with the opening of the price bid of the petitioner, the Court is of the considered opinion that it would meet the ends of justice to direct the petitioner to approach the respondent authorities for consideration of their price bid as their price bid could be opened prior to the issuance of e-mail in reference.*

5. *On such representation is being made, the respondent authorities shall take note of their instruction that the price bid could be opened prior to the rejection of the price bid of the petitioner, and the authorities shall take a decision in accordance with law.*

6. *If such application/ representation is made by the petitioner, the respondent authorities would consider the same independent of the rejection vide their e-mail dated 02.01.2023 at 10.03 AM.*

7. *Accordingly, this writ petition stands disposed of to the extent as indicated above at the motion stage without issuance of notice to the respondents."*

3. We are of the view that though any matter could be disposed of at the motion stage itself, yet, if it touches upon the merit of the case even slightly, in such circumstances all the parties ought to be heard. In the present case, the present appellant who was impleaded as respondent No.4 in the writ petition was one of the bidders and had every right to be heard before any observation is made which would have the potential of impacting the merit of the case.

4. We find that the submission advanced by the respondent No.2 in the writ petition has the potential of affecting the merit of the case. The instruction received by the learned counsel for the respondent No.2 in the writ petition to the effect that the price bid of the petitioner could be opened after receipt of the password from the petitioner, itself is a contentious issue, as it is the plea of the

appellant herein (respondent No.4 in the writ petition) that the writ petitioner did not provide the password to enable the authorities to open the technical bids on the same day along with other bidders because of which the bid of the appellant was rightly rejected, though the password was subsequently provided.

In our view, the rejection of a bid whether it was done properly or not, certainly would have an impact on the bidding process *qua* the other bidders if the bid of the writ petitioner was allowed to be reconsidered. As such, it being a contentious issue, in our opinion, the other bidders ought to have been heard before the order was passed by the learned Single Judge allowing considering his bid.

5. In the present case, the present appellant who was impleaded as respondent No.4 in the writ petition, obviously was not heard.

Under such circumstances, without entering into the rival contentions of the parties, we are satisfied that the appellant had a right to be heard before the impugned order was passed by the learned Single Judge.

6. For the aforesaid reasons, we set aside the impugned order dated 06.01.2023 passed in WP(C) No.96/2023 and remand the matter to the learned Single Judge, so that the learned Single Judge may pass appropriate orders, whether interim or otherwise, which will have a bearing on the tender process after hearing all the parties in the said writ petition.

7. At this stage, Mr. D. Das, learned senior counsel for the private respondent No.1 submits that if the impugned order dated 06.01.2023 is set aside, his interest will be greatly prejudiced inasmuch as his bid would stand rejected. We have noted that his bid was rejected on 02.01.2023, which was challenged in the writ petition, and as such, the private respondent No.1 (writ petitioner) will be at liberty to approach the learned Single Judge with necessary prayer to protect his interest.

8. Accordingly, we remand the matter to the learned Single Judge for fresh consideration so that all the parties may be heard before any effective or final order is passed.
9. Considering the urgency and nature of the case, as prayed by parties, the matter be placed before the learned Single Judge on 30.01.2023.
10. The present appellant who was impleaded as respondent No.4 in the writ petition, will also appear before the learned Single Judge on 30.01.2023 and there will be no need to serve any notice to him in the said writ petition as he is already represented.
11. The writ petition is, accordingly, restored to file in its original number before the learned Single Judge. Registry to list the writ petition before the learned Single Judge in "motion" column on 30.01.2023.
12. The appeal is allowed with the above observations.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant