

GAHC010023272022



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

Case No. : WP(C)/1188/2022

M/S GANESH ELECTRICALS PVT LTD
REP. BY ITS DIRECTOR, SHRI MRUGESH RAMESH CHANDRA PATEL, F-
202/G-201, S G BUSINESS HUB, NEAR GOTA FLYOVER BRIDGE, SG
HIGHWAYA, GOTA, AHMEDABAD-332470.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PRINCIPAL SECRETARY, POWER (ELECT) DEPTT., DISPUR,
GUWAHATI PIN-781006.

2:THE CHAIRMAN

ASSAM POWER DISTRIBUTION CO. LTD.
BIJULEE BHAWAN (ANNEX. BUILDING)
PALTAN BAZAR
GUWAHATI
PIN-781001.

3:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION CO. LTD.
BIJULEE BHAWAN (ANNEX. BUILDING)
PALTAN BAZAR
GUWAHATI
PIN-781001
DIST. KAMRUP (M).

4:THE CHIEF GENERAL MANAGER (RE)
ASSAM POWER DISTRIBUTION CO. LTD.
BIJULEE BHAWAN (ANNEX. BUILDING)
PALTAN BAZAR

GUWAHATI
PIN-781001
DIST. KAMRUP (M)

Linked Case : WP(C)/1190/2022

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DIST. KAMRUP (M).

For the Petitioner(s) : Mr. B. K. Singh, Advocate
: Ms. B. Bora, Advocate

For the Respondent(s) : Mr. K. P. Pathak, SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 14-09-2023

1. The three writ petitions are taken up for disposal vide this common judgment and order taking into account that the facts in the three writ petitions are similar.

2. The facts as could be seen from a perusal of the pleadings contained in the three writ petitions which are similar in content are that the Respondent Company i.e. the Assam Power Distribution Company Ltd. (for short "APDCL") invited bids from interest bidders for various projects on domestic competitive bidding against various packages. The three writ petitions herein relates to package Nos. 4, 11 and 15.

3. For the purpose of giving a gist of the said packages in question, it is relevant to mention that Package No.4 was in respect of Dibrugarh, Jorhat, Tinsukia, Kamrup and the number of households were 786, 177, 705, 2459 respectively and the requirement of systems was 4127. In respect of package No.11, it pertained to Barpeta District where the households were 4768 and the requirement of the systems was 4768. In respect to package No.15, the District was Nalbari and the total household along with the requirement of the

systems was 4000. The said notice inviting bids contained various terms and conditions. For the purpose of the instant writ petitions, it is not required to refer to all such terms and conditions save and except Appendix-1 which contains the terms and procedures of payment.

4. A reading of the said Appendix-1 which was a part of the invitation of bids and more particularly Clause-A which relates to supply, erection, testing and commissioning of works stipulates that the first installment of 60% would be paid against supply of various items of price Schedule-I (Complete items of individual Solar Home Lighting System) including 100% GST which shall be paid on receipt and acceptance of the materials on submissions of documents indicated therein. There is a note in Sub-Clause (1.1) of Clause-A of Appendix-1 which stipulates that total 4 (four) numbers of progressive bills against the supply was allowed; after submission of 2 (two) numbers of supply bills, the contractor shall have to complete Erection, Testing and Commissioning of the 100% material/equipment supplied for submission of the next bills against supply and supply of 100% ordered quantity shall be completed as per the stipulated timeline mentioned in the LOA. The Petitioner on the basis of the said invitation of bids submitted its bids for various packages including Package Nos. 4, 11 and 15.

5. On 12.11.2021, identical Letters of Award (for short "LOA") were issued in favour of the Petitioners by the Respondent Company in respect to Package Nos. 4, 11 and 15. In the said LOA, amongst others, the terms and procedure for payment were enclosed as Annexure-A. The Annexure-A which is a part of the LOA upon being perused shows that in terms with Clause 1.1, 60% of the payment shall be made against supply of complete items of individual Solar

Home Lighting System including 100% shall be paid on receipt and acceptance of materials on submission of various documents indicated therein and the note appended to Sub-Clause (1.1) of Clause A of Annexure-A stipulates that as the project completion (in all respects) date was 31.12.2021, release of the installment of 60% progressive payment would be based on physical progress of the work as on date. It was further mentioned in that connection that a certificate of actual physical progress of the work from the AGM (project) APDCL of the concerned District shall have to be submitted by the Contractor. Apart from the above, it was mentioned that total 4 (four) numbers of progressive bills against supply shall be allowed subject to the condition as mentioned.

6. It further reveals from the records that immediately upon receipt of the LOA, the Petitioner submitted a representation on 15.11.2021 in respect to the 3 packages i.e. Package Nos. 4, 11 and 15 requesting that the quantity for which the invitation of bids were made be allowed to be supplied by the Petitioner. Be that as it may, on 19.11.2021, the Petitioner revoked the LOA and withdrew the bids and sought for release of the Bank Guarantee, (EMD) on the ground that the terms and procedure for payment as mentioned in the invitation for bid i.e. Appendix-1 which was agreed to by the Petitioner while submitting its bid was changed by the APDCL while issuing the LOA as could be seen from Annexure-A of the LOA. Under such circumstances, the Petitioner therefore requested that the bids so submitted by the Petitioner be deemed to be withdrawn and the EMD be returned to the Petitioner. However, the Respondent Authorities vide Email dated 25.11.2021 terminated the LOA in relation to Package Nos. 4, 11 and 15 with immediate effect giving reasons that it was done so for rejection of the LOA by the Petitioner and thereupon

invoked the Bank Guarantees which were submitted by the Petitioners as EMD in respect to Package Nos. 4, 11 and 15 of Rs.25,00,000/- each. The Petitioner being aggrieved by the invocation of the Bank Guarantee and forfeiture of the amount of Rs.25,00,000/- against each i.e. totaling to Rs.75,00,000/- had approached this Court by filing the instant three writ petitions.

7. It reveals from the records that this Court vide an order dated 17.03.2022 issued notice. The record further reveals that the Respondent APDCL filed an Affidavit-in-Opposition.

8. I have heard the learned counsels for the parties and perused the materials on record. This Court in detail have mentioned the terms and procedure of payment as mentioned in Appendix-1 of the invitation of bids whereby 60% of the payment was to be made against supply of various items of price Schedule-1 (complete items of individual Solar Home Lighting System) including 100% GST. The Petitioner duly agreed to the said terms and submitted the bid. However, while issuing the LOA dated 12.11.2021, the Respondent Company changed the terms and procedure of payment whereby the release of 60% was dependent upon the physical progress of the work as on that date.

9. Now, the question therefore arises as to whether the Respondent APDCL could have changed unilaterally the said terms of payment. The Invitation of Bids as was done by the Respondent Company contained various terms and conditions calling upon the tenderers to supply on the basis of the said terms and conditions. This offer which includes the mode of payment was duly accepted by the Petitioner by submitting its bids. The bids so submitted by the Petitioner in respect to Package Nos. 4, 11 and 15 would show that the

Petitioner duly accepted the terms of the Invitation of Bids including the procedure for payment as stipulated in Appendix-1. The changing of the terms of the mode of payment unilaterally by the Respondent Company, in the opinion of this Court vide the LOA could not have been imposed upon the Petitioner by the Respondent Company. The Petitioner therefore for business reasons revoked the LOA's dated 12.11.2021 issued in favour of the Petitioner in respect to Package No. 4, 11 and 15.

10. The Respondent Authorities herein as stated above could not have unilaterally changed the conditions which was agreed to by the Petitioner pursuant to the Invitation of the Bids. The actions of the Respondent Company to impose upon the Petitioner certain terms to which the Petitioner did not agree and thereupon invoke the Bank Guarantees which were submitted as Earnest Money Deposit in the opinion of this Court clearly shows that the actions of the Respondents were arbitrary, unreasonable as well as illegal which violates the mandate of Article 14 of the Constitution.

11. Accordingly, the instant three writ petitions therefore stands disposed with the following observations and directions:

(i) The invocation of the Bank Guarantees bearing BG No. 006GT02212660006, BG No.006GT02212660007 and BG No.006GT02212660008 in relation to package No. 4, 11 and 15 respectively of an amount of Rs.25,00,000/- each by the Respondent Company are in violation to Article 14 of the Constitution and accordingly, it is declared that the said actions are illegal, arbitrary, unreasonable as well as irrational.

(ii) The Respondent Company is directed to refund the amount of

Rs.75,00,000/- which was illegally forfeited by the Respondent Company to the Petitioners within a period of 20 days from the date of submission of the certified copy of the instant judgment.

JUDGE

Comparing Assistant