

GAHC010053462023



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

Case No. :WRIT PETITION (C) No. 2566/2020

1. M/s Donyi Polo Enterprise, having its office at Upper Chachal, VIP Road, Six Mile, P.S- Dispur, Guwahati- 781022, District - Kamrup (M) Assam, Represented by its Proprietor, the petitioner no. 2, Sri Mithuram Doley, S/o - Late Tanuram Doley, a permanent R/o – Sariyanigaon, P.O. – Bilmukh, P.S.- Ghilamara, Sub-Division – Dhakuakhana, District – Lakhimpur, Assam, Pin- 787053.
2. Shri Mithuram Doley, S/o - Late Tanuram Doley, permanent R/o – Sariyanigaon, P.O.- Bilmukh, P.S. – Ghilamara, Sub-Division – Dhakuakhana, District – Lakhimpur, Assam, Pin – 787053.

.....Petitioners

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam Department, Department of Welfare of Plain Tribes & Backward Classes, Janata Bhawan, Dispur, Guwahati - 781006.
2. The Director, Welfare of Plain Tribes & Backward Classes, Government of Assam, Rukminigaon, P.O. & P.S. – Dispur, Guwahati - 781006.
3. The Tender Evaluation Committee of Directorate of Welfare of Plain Tribes & Backward Classes, Represented by its Member Secretary, Rukminigaon, P.O. & P.S. – Dispur, Guwahati – 781006.

4. M/s Eureka Trade, represented by its Proprietor, Sri Kukheswar Gogoi, H/No. 15, Saikia Complex, Chandan Nagar, VIP Road, Guwahati – 781022.
5. M/s Aonghuman Enterprise, Represented by its Proprietor, Sri Jesh Goyary, Sonaighuli Dakhingaon, Guwahati – 781034.
6. M/s Dhiraj Gogoi, Represented by its Proprietor, Sri Dhiraj Gogoi, H/No. 15, Saikia Building, Express Highway, VIP Road, Chandan Nagar, Near Rahman Hospital, Guwahati- 781022.
7. M/s Jario INC, Represented by its Proprietor, Sri Looknath Deuri, H/No. 3, Devedaru Path, Guwahati – 781006.
8. M/s P.D. Enterprise, Represented by its Proprietor, Sri Parama Deori, Dakhin Gaon, Bishu Nagar, Kahilipara, Guwahati – 781019.
9. Diganta Gogoi, Lakwa, Sivasagar, Assam, Pin- 785688.
10. Trade and Allied Agencies, represented by its Proprietor, Shri Pawan Kr. Siotia, Siotia Market, SRCB Road, Fancy Bazar, Guwahati – 781001.
11. M/s Mirusi Enterprise, represented by its Proprietor, Sri Karmajyoti Deori Majorchapuri Kinapathar, North Lakhimpur, Pin- 784164.
12. M/s S.S. Enterprise, Represented by its Proprietor, Shri Sarat Sing Deuri, Dakhin Gaon, Kahilipara, Guwahati – 781019.
13. J.N. Trading, Represented by its Proprietor, Sri Moonmoon Saha, Lachit Nagar, Main Road, Near Kali Mandir, Guwahati- 781007.
14. M/s H.J. Associates, Represented by its Proprietor, Shri Haren Deori, Dakhin Gaon, Kahilipara, Guwahati – 781019.

.....Respondents

Advocates :

Petitioner : Mr. G. Alam, Advocate.
Respondents : Mr. R. Dhar, Standing Counsel,
Welfare of Plain Tribes & Backward
Classes Department
Date of Hearing, Judgment & Order : 23.08.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The writ petition has been instituted by the petitioners under Article 226 of the Constitution of India to assail a Corrigendum, issued by the Tender Evaluation Committee, constituted by the Director, Welfare of Plain Tribes & Backward Classes [WPT&BC], Government of Assam for evaluation of the bids received in response to an e-Tender Notice dated 19.07.2019, whereby, the Technical Bid of the petitioner was declared disqualified on the basis of a letter dated 20.09.2019 received from M/s T.T.K. Prestige Limited. Seeking setting aside of the said Corrigendum as well as the Orders, all dated 07.03.2020 [Annexure-11 series], whereby, supply orders had been placed for supply of pressure cookers and gas stoves in favour of the respondent nos. 4 – 14, the petitioners have preferred the writ petition. The petitioners have also sought for a direction to the respondent authorities to consider its financial bid by declaring it as the lowest bidder [L-1] in relation to the bidding process initiated by e-Tender Notice dated 19.07.2019.

2. In order to appreciate the nature of challenge, a brief narration about the previous events leading to the issuance of the impugned Corrigendum appears necessary.

3. By an e-Tender Notice bearing Tender no. DW/NIT/765/2019-20/1 dated 19.07.2019, the Director, WPT&BC, Assam invited e-tenders from intending bidders and dealers/manufacturers for supply of pressure cookers and gas stoves for ST/OBC beneficiaries on Rate Contract basis, as shown in Annexure-A in the said e-Tender Notice. It was clarified that if the bidder was not a manufacturer, it should have an agreement with the manufacturers of the items authorizing the bidder to participate in the tender process. As per the e-Tender Notice, the last date of submission of tender was 16.08.2019 and the time of bid opening was fixed at 04-30 p.m., 16.08.2019.

4. The petitioner no. 1 is a proprietorship concern and the petitioner no. 2 is its proprietor. For brevity, they are referred hereinafter as the petitioner, at places. The petitioner has asserted that he is a registered Class-I Contractor with the Directorate of Agriculture, Government of Assam and also a Class-I-A category contractor of the Assam Plains Tribes Development Corporation Ltd. The petitioner no. 1 firm is also an authorized dealer of M/s T.T.K. Prestige Ltd., a manufacturer of pressure cookers, gas stoves and kitchen appliances with its Corporate Office at Bangalore. The petitioner has contended that to participate in the tender process initiated by the e-Tender Notice dated 19.07.2019, M/s T.T.K. Prestige Ltd. had issued a Certificate of Dealership to the petitioner no. 1 firm certifying the petitioner no. 1 firm to be its dealer for Assam till 31.03.2020. As per the Certificate issued by M/s T.T.K. Prestige Ltd., annexed to the writ petition as Annexure-1, M/s T.T.K. Prestige Ltd. had certified that the petitioner

no. 1 firm was their dealer and it could sell and service the products of M/s T.T.K. Prestige Ltd. for Government supply only. The Certificate further indicated that the petitioner no. 1 firm was authorized to submit a bid and also to negotiate and conclude the contract in respect of all business in the State of Assam.

5. In response to the e-Tender Notice, 25 nos. of bidders including the petitioner no. 1 firm, submitted their bids on-line and out of those 24 nos. of bidders also submitted their bids in the off-line mode. As the on-line bid of one of the bidders was not supported by any hard copy, the bid of the said bidder was rejected leaving 24 nos. of bidders in fray at the technical bid evaluation stage. The Technical Bid Evaluation Committee of the Directorate of Welfare of Plain Tribes & Backward Classes [WPT&BC] held its Meeting on 17.09.2019 for the purpose of evaluating the technical bids of the 24 nos. of participant bidders. The Technical Bid Evaluation Committee scrutinized the bids of the respective bidders qua the requirements set forth in the Tender Notice regarding documents, required to be submitted along with the bids. After such scrutiny, the Technical Bid Evaluation Committee declared the technical bids of 7 [seven] nos. of bidders non-responsive. The Technical Bid Evaluation Committee found technical bids of 17 [seventeen] nos. of bidders responsive to the terms and conditions of the e-Tender Notice. The petitioner no. 1 firm was included amongst those 17 [seventeen] nos. of technically responsive bidders by the Technical Bid Evaluation Committee.

6. I have heard Mr. G. Alam, learned counsel for the petitioner and Mr. R. Dhar, learned Standing Counsel, WPT&BC Department, Assam.

7. Mr. Alam, learned counsel for the petitioner has submitted that on

26.01.2020, the petitioner was informed by an e-mail that his bid was admitted for further consideration but on 26.01.2020, he received another e-mail from the tendering authority whereby it was informed that the petitioner no. 1 firm's bid was rejected during technical evaluation stage by the tendering authority. Mr. Alam has, thus, contended that once the Technical Bid Evaluation Committee, after due evaluation, had declared the technical bid of the petitioner was a responsive one in its Meeting dated 17.09.2019 and declared that the financial bid of the petitioner would be considered in the subsequent stage, it was not open for the respondent authorities to declare the technical bid of the petitioner as a non-responsive one by making a U-turn. He has contended that the Technical Bid Evaluation Committee at a later point of time sat again to reconsider the technical bid of the petitioner on the pretext of receiving a letter dated 20.09.2019 from M/s T.T.K. Prestige Ltd., to declare the technical bid of the petitioner disqualified. Contending that the petitioner met all the qualification criteria set forth in the e-Tender Notice dated 19.07.2019 and his bid was accompanied with all the requisite documents mentioned in the e-tender Notice dated 19.07.2019, the petitioner has laid the challenge in the afore-stated manner.

8. Mr. Dhar, learned Standing Counsel, WPT&BC Department, Assam has submitted that though at an earlier point of time, the technical bid of the petitioner no. 1 firm was declared to be responsive but when the letter dated 20.09.2019 was received, the matter regarding responsiveness or non-responsiveness of the petitioner no. 1 firm's technical bid vis-à-vis the terms and conditions set forth in the e-Tender Notice dated 19.07.2019 was re-visited again by the Technical Bid Evaluation Committee and upon examination, it was found that the petitioner no. 1 firm's technical bid was non-compliant to Clause

6 of the e-Tender Notice dated 19.07.2019. It is contended that it is open for the tendering authority to re-visit an earlier decision if in the event the tendering authority had overlooked the essential terms and conditions in respect of a bid of a participant bidder.

9. I have considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings.

10. As the condition set forth in Clause 6 of the e-Tender Notice is at the forefront for rejection of the technical bid of the petitioner, it is apposite to quote Clause 6 of the e-Tender Notice for ready reference. Clause 6 of the e-Tender Notice dated 19.07.2019 reads as under :-

6. The Bidder [In case of an authorized dealer] must have to submit an Authorization letter and Dealership certificate to participate in this tender bid issued by their principal manufacturer[s] of Pressure Cooker and Gas Stove in favour of bidder. The letter should be addressed to the Director, Welfare of Plain Tribes and Backward Classes, Assam, Guwahati - 6. The reference number of this tender bid should be mentioned in authorization letter. The following documents from principal manufacturer[s] must also be submitted along with the authorization letter and Dealership certificate:-

- a. Valid ISO 9001: 2015 certificate of manufacturer[s] for Pressure Cooker and Kitchen Appliances.
- b. Valid ISI certificate of both the products [Pressure Cooker and Gas Stove]
- c. Valid Laboratory Test report certificate of each item [Pressure Cooker and Gas Stove]
- d. Catalogue of the items.

11. On perusal of Clause 6 of the e-Tender Notice, it has emerged that a participant bidder if he is an authorized dealer or a manufacturer, had to meet

two requirements, *firstly*, he had to submit an Authorization Letter from the principal manufacturer of Pressure Cooker and Gas Stove; and, *secondly*, he had to submit a Dealership Certificate issued by the principal manufacturer of Pressure Cooker and Gas Stove; in his favour to participate in the Tender Process initiated by the e-Tender Notice vide Tender no. DW/NIT/765/2019-20/1 dated 19.07.2019. The further requirement was that the Authorisation Letter must be addressed to the Director, Welfare of Plain Tribes and Backward Classes [WPT&BC], Assam clearly mentioning the reference no. of the tender in the Authorization Letter.

12. In the backdrop of the requirements under Clause 6 of the e-Tender Notice, a perusal of the Authorisation Letter, stated to have been obtained by the petitioners from the manufacturer, M/s T.T.K. Prestige Limited, annexed as Annexure-1 to the writ petition, is necessary. On perusal, it is found that the said Authorization Letter did not meet the requirements of Clause 6 of the e-Tender Notice as neither there was any reference of the e-Tender Notice dated 19.07.2019, nor the same was addressed to the Director, WPT&BC, Assam.

13. In such fact situation, the contention of Mr. Dhar is that the Technical Bid Evaluation Committee, while scrutinizing the bids of 24 [twenty four] nos. of bidders in its Meeting, held on 17.09.2019, had overlooked the same has some force. The Technical Bid Evaluation Committee, constituted by the tendering authority, had met again at a later point of time when it received a letter dated 20.09.2019 from M/s T.T.K. Prestige Limited. It is noticed from the Minutes of the Meeting of the Technical Bid Evaluation Committee dated 17.09.2019 that all the 17 [seventeen] nos. of bidders including the petitioner, whose technical bids were originally declared as responsive, had offered products of one

manufacturer only, that is, M/s T.T.K. Prestige Limited. The letter dated 20.09.2019 of M/s T.T.K. Prestige Limited is available on record. The said letter dated 20.09.2019 was addressed to the Director, WPT&BC, Assam as a Letter of Authorization in reference to Tender no. DW/NIT/765/2019-20/1 dated 19.07.2019. In the said Letter of Authorization, M/s T.T.K. Prestige Limited had certified that they had authorized the 16 [sixteen] nos. of dealers mentioned therein to participate in the bidding process initiated by the e-Tender Notice bearing Tender no. DW/NIT/765/2019-20/1 dated 19.07.2019. In the 16 [sixteen] nos. of authorized dealers of M/s T.T.K. Prestige Limited, mentioned in the letter dated 20.09.2019, the name of the petitioner is missing. Thus, it clearly emerges that the petitioner no. 1 firm's bid was not accompanied by an Authorization Letter from its manufacturer, M/s T.T.K. Prestige Limited addressed to the Director, WPT&BC, Assam and without the reference of e-Tender Notice bearing Tender no. DW/NIT/765/2019-20/1 dated 19.07.2019, to meet the requirements of Clause 6 of the e-Tender Notice dated 19.07.2019.

14. In such view of the matter, this Court does not find any good and sufficient reason to hold that the decision taken by the Technical Bid Evaluation Committee to declare the technical bid of the petitioner disqualified on receipt of the letter dated 20.09.2019 from M/s T.T.K. Prestige Limited vide the Corrigendum [Annexure-7] has suffered from any infirmity and to be unjustified. Consequently, there is no good and sufficient reason to interfere with the Orders, all dated 07.03.2020, issued by the Director, WPT&BC, Assam to the respondent nos. 4 – 14 directing them to supply the pressure cookers and gas stoves as there is no material to declare that their technical bids were not compliant to the terms and conditions of the e-Tender dated 19.07.2019.

15. In view of the discussion made above and for the reason assigned, the writ petition is found to be devoid of any merit and the same is liable to be dismissed. It is accordingly dismissed. The interim order dated 23.06.2020 stands recalled. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant