

GAHC010099692023



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

Case No. : WA/165/2023

HINDUSTAN LATEX FAMILY PLANNING PROMOTION TRUST
THROUGH ITS AUTHORIZED SIGNATORY AWANISH AWASTHI,
HAVING ITS CORPORATE OFFICE AT B-14A, IIIND FLOOR,
SECTOR-62, NOIDA- 201307, UTTAR PRADESH.

VERSUS

1. THE STATE OF ASSAM,
THROUGH HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF ASSAM, DISPUR, GUWAHATI-781006.

2:THE NATIONAL HEALTH MISSION, ASSAM
REPRESENTED BY THE MISSION DIRECTOR
HAVING ITS OFFICE AT SAIKIA COMMERCIAL COMPLEX
SRI NAGAR PATH, NEAR POST OFFICE BUS STAND
G.S. ROAD, CHRISTIANBASTI,
GUWAHATI-781005.

3:THE MISSION DIRECTOR,
NATIONAL HEALTH MISSION (NHM),
OFFICE OF THE MISSION DIRECTOR
SAIKIA COMMERCIAL COMPLEX, SRINAGAR PATH
CHRISTIANBASTI, G.S. ROAD
GUWAHATI-781005, ASSAM

4:THE COMMUNITY ACTION THROUGH MOTIVATION PROGRAMME-
CAMP
REPRESENTED BY ITS PRESIDENT
F-106, GARDEN RESIDENCY, CHUNA BHATTI
BHOPAL, MADHYA PRADESH-462016

For the Appellant : Mr. B.D. Konwar, Senior Advocate assisted by Ms. P. Gupta, Advocate and Ms. J. Singh, Advocate.

For the Respondents : Mr. B. Gogoi and Ms. A. Das,
Standing Counsel, Health and NHM, Assam.
Mr. U.K. Nair, Senior Advocate assisted by Ms. A. Verma, Advocate and Mr. A. Baruah Advocate for respondent No.4.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE MITALI THAKURIA

24.05.2023

The instant intra-Court writ appeal is directed against the judgment and order dated 04.05.2023, whereby, WP(C) No.2049/2023 preferred by the appellant/writ petitioner seeking to challenge the decision of the respondent authorities accepting the technical bid of respondent No.4 in the tender process initiated vide Notice dated 01.10.2022 for maintaining and operating Mobile Medical Units in the State of Assam to provide primary and selective secondary health care services.

2. The appellant/writ petitioner assailed the decision taken by the authorities, i.e., respondent Nos.2 and 3 in treating the respondent No.4 as a qualified bidder in the technical bid primarily on the ground that the respondent No.4 did not have available with it the requisite number of Mobile Medical Units (MMU) i.e. a minimum of 80 in terms of the procedure of evaluation of bids and hence, it should have been disqualified during technical assessment.

3. Mr. B.D. Konwar, learned Senior counsel for the appellant urged that since the NIT was for procuring the services of Mobile Medical Units (MMUs), the applicant was essentially required to be in possession of at least 80 MMUs, as per the evaluation criterion No.2 mentioned in Section III of the tender document which reads as below:

“Evaluation of Technical Proposal

- I. The bidder must fulfill the eligibility criteria mentioned in the Section 5.
- II. The bidder also must obtain minimum 15 marks on the following technical criteria or parameters for further evaluation.

Criteria/Parameter	Marks Tally	Maximum Marks
1.Experience of the Bidder/Consortium in implementing similar project MMU/Ambulance Service at Community Level:		10
a) More than 5 years	10	
b) More than 3 years up to 5 years	7	
c) 03 years	4	
2. No. of MMU/Ambulances being operated in states in last 5 years		10
a) 100 and Above	10	
b) 81-99	7	
c) 80	4	
3) Quality of skilled Human resources in the provided MMU/Ambulance Service		10
a) With Doctor	10	
b) Without Doctors	5	

4. Mr. Konwar, thus, urged that the learned Single Judge erred in dismissing the writ petition of the petitioner and affirming the decision of the tendering authority in treating the respondent No.4 to be a technically qualified bidder.

5. Learned Senior counsel for the appellant also contended that the prayer made by the petitioner/appellant to grant extension to it till 06.01.2023 was not properly dealt with.

6. Per contra, Mr. B. Gogoi and Ms. A. Das, learned Standing Counsel, Health and NHM, Assam and Mr. U.K. Nair, learned Senior counsel assisted by Ms. A. Verma and Mr. A. Baruah, learned counsel for the private respondent, i.e. respondent No.4 (successful bidder) have vehemently and fervently opposed the submissions advanced by Mr. Konwar, learned Senior counsel representing the appellant.

7. It was contended that the tender document nowhere mandated that the bidder would be required to be in possession of at least 80 MMUs as claimed by the appellant/petitioner. It was submitted that the number of MMUs/Ambulances possessed/operated by the bidder was only relevant for assessment of the marks awardable in the process for technical evaluation. Mr. Nair contended that the bidder having 100 and above MMUs/Ambulances would garner full marks i.e. 10 in the evaluation process. One having 81 to 99 units would garner 7 marks whereas one having 80 Units would garner 4 marks. It was submitted that if a bidder was having less than 80 units, it would not get any mark under this criterion.

8. Drawing the Court's attention to Section IV of the tender document, more

particularly, Clause 2(1) thereof, it was pointed by Mr. Nair that as per this condition, the service provider, whose bid is accepted, would be then required to provide the requisite number of MMU vehicles which are not more than 3(three) years old from the date of manufacture on the date of commencement. He contended that if the condition of having minimum 80 numbers of vehicles in advance is read into the tender document, it would lead to an absurd and unreasonable restriction because the bidder then would be required to have at least 80 vehicles which are not more than 3(three) years old even before filing the bid which is not the intent of the qualifying criterion. Mr. Nair contended that Clause 2(1) clearly indicates that the MMU's would have to be procured by the service provider after being declared a successful bidder because that would pave the way for procuring the latest machines in keeping with the Condition No.2(1) of Clause IV that the service provider would have to arrange the MMU vehicles of less than 3 (three) years duration along with the listed equipments, human resources to maintain the MMUs operational.

9. Thus, as per Mr. Nair the requirement of procuring the vehicles would come into picture once the work order is awarded. He thus submitted that the learned Single Judge was absolutely justified in turning down the challenge laid by the appellant to the technical evaluation undertaken by the procuring entity and in holding the respondent No.4 to be technically qualified. He further pointed out that the LOI has now been issued to the respondent No.4 which not being under challenge, the appeal has to fail.

10. On these submissions, learned counsel for the respondents implored the Court to affirm the impugned judgment and order dated 04.05.2023 rendered by learned Single Judge in WP(C) No.2049/2023 and dismiss the writ appeal.

11. We have given our thoughtful consideration to the submissions made at Bar and have also gone through the material available on record.

12. On a bare perusal of the tender document and the contentious criterion No.II (Section III) which has been reproduced (supra), we are of the firm view that this Clause nowhere prescribes that the bidder must be possessed of at least 80 MMUs/Ambulances so as to qualify in the technical aspects. The number of MMUs/Ambulances in hand is only meant for award of marks. There is no such reflection in the tender document that a bidder having less than 80 MMUs/Ambulances would be outrightly disqualified on technical aspects. What is indicated in the tender document for technical evaluation procedure is that, that the bidder must fulfill the eligibility criterion mentioned in Section 5 and that minimum of 15 marks must be secured on the evaluating technical criterion or parameters for further evaluation. There is no dispute that the respondent No.4 obtained the requisite number of marks in the technical bid. There is not even a whisper of allegation by the appellant/ writ petitioner that the respondent No.4 was lacking in any of the eligibility criteria prescribed in Section 5 of tender document. Thus, the challenge laid by the appellant to the technical bid evaluation undertaken by the procuring entity had no legs to stand.

13. Condition No. 2(1) of Section IV makes it clear that the service provider whose bid is accepted would have to arrange for MMU vehicles which should not be more than 3 (three) years old from the date of manufacture. Hence, the number of MMUs required under the contract which are less than 3 (three) years old, would have to be procured before commencement of the work and not earlier.

14. Reference to number of vehicles in the technical evaluation is relevant only for awarding marks proportionately.

15. The view taken by the learned Single Judge while holding the respondent No.4 qualified on technical aspects of the tender document and in rejecting the writ petition, WP(C) No.2049/2023 of the appellant/petitioner by order dated 04.05.2023, does not suffer from any infirmity warranting interference.

16. Hence, the writ appeal fails and dismissed as being devoid of merit.

17. The Interlocutory Application filed by the appellant is also rejected.

18. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant