

GAHC010122952020



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

Case No. : WP(C)/3559/2020

RANJIT BARUAH
S/O LT. PURENDRA NATH BARUAH, PROPRIETOR OF M/S RANJIT
BARUAH, NATUN TEKELA GAON, A.T. ROAD, P.O. MOHANAGHAT,
DIBRUGARH, PIN-786006

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HEALTH AND FAMILY WELFARE DEPTT. DISPUR, GUWAHATI-781006

2:THE SECRETARY
GOVT. OF ASSAM
HEALTH AND F.W. (B) DEPTT. DISPUR
GUWAHATI-781006

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIXMILE
KHANAPARA
GUWAHATI-7810022

4:THE PRINCIPAL CUM CHIEF SUPERINTENDENT
ASSAM MEDICAL COLLEGE HOSPITAL DIBRUGARH-786002

5:THE SUPERINTENDENT
ASSAM MEDICAL COLLEGE HOSPITAL DIBRUGARH-786002

6:THE TENDER COMMITTEE
ASSAM MEDICAL COLLEGE HOSPITAL DIBRUGARH-786002
REP. BY IT CHAIRMAN

7:M/S Q CLUB
REP. BY ITS SOLE PROPRIETOR
SRI RAJ JYOTI GOGOI
S.N.B. PATH CHIRING CHAPORI
DIBRUGARH
ASSAM
PIN-786001

8:M/S RAJENDRA TOURIST
REP. BY ITS SOLE PROPRIETOR
SRI AJAY VASHISHT
24/47 100FT ROAD NEAR SHIV MANDIR CHHAJJUPUR
SHAHDARA
DELHI-11003

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : SC, HEALTH

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 28-04-2023

Heard Mr. S. Sharma, learned Senior Counsel assisted by Mr. J. Deka, learned counsel for the petitioner; Mr. B. Gogoi, learned Standing Counsel, Health Department for the respondent nos. 1 – 6; Mr. D. Das, learned Senior Counsel assisted by Ms. P. Baruah, learned counsel for the respondent no. 7; and Mr. U.K. Saikia, learned counsel on behalf of Mr. R.S. Mishra, learned counsel for the respondent no. 8.

2. The subject-matter of the instant writ petition is a tender process initiated for Outsourcing of Dietary Services for patients at the Assam Medical College & Hospital [AMCH], Dibrugarh for the purpose of entering into a Rate Contract of 2 [two] years. The Notice Inviting Tender [e-Tender] was published on 23.06.2020 in the newspapers. In response to the NIT, the petitioner, the

respondent no. 7 and the respondent no. 8 along with other bidders participated in the tender process and the Tender Committee after evaluation of the bids, decided to award the contract in favour of the respondent no. 7. By an order dated 02.09.2020 of the respondent no. 5, the respondent no. 7 was intimated that he was awarded the contract. The respondent no. 7 was thereby, requested to execute a notarized Agreement with the AMCH, Dibrugarh authorities within 15 days therefrom. The Deed of Agreement was thereafter, executed on 10.09.2020 between the respondent no. 5 on behalf of the AMCH, Dibrugarh and the respondent no. 7. Clause 1 of the Deed of Agreement had specifically mentioned that the agreement would commence from the date of execution of the agreement for a period of 2 [two] years.

3. This order has reference to the previous order passed yesterday, 27.04.2023. As the contract period of 2 years had elapsed in the year 2022 and considering the intervening factors, Mr. Gogoi, learned Standing Counsel, Health Department was requested to take instructions as to whether the respondent authorities would go for a fresh tender process considering the fact that the period of the Deed of Agreement dated 10.09.2020 had expired in the meantime in September, 2022.

4. Mr. Das, learned Senior Counsel appearing for the respondent no. 7 had also sought time to take instructions from his client as regards his client's view about the feasibility of the Agreement dated 10.09.2020.

5. Mr. Gogoi, learned Standing Counsel, Health Department has submitted, on the basis of the instructions received by a Communication bearing no. MCH/2023/10156 dated 27.04.2023 from the respondent no. 4 and the respondent no. 5, that it was due to the operation of the interim order, the Outsourcing of Dietary Services, secured by the Deed of Agreement dated

10.09.2020 for a period of 2 [two] years, could not be carried out and despite expiry of the 2 [two] years' term of the agreement, fresh tender process is not initiated in view of the pendency of the writ petition. It is mentioned that the respondent authorities of the AMCH, Dibrugarh would take the initiative for a fresh tender process for Outsourcing of Dietary Services for patients at the AMCH, Dibrugarh, if any order is passed to that effect in the writ petition, which is pending.

6. Mr. Das, learned Senior Counsel appearing for the respondent no. 7 has submitted, on receipt of instruction from his client, that at this stage i.e. in the year 2023, it will not be feasible for the respondent no. 7 to carry out obligations under the Deed of Agreement dated 10.09.2020 at the agreed rate of Rs. 133/-, at which he was offered the contract on 10.09.2022 and he is not interested to pursue the present writ petition, provided there is no consequential adverse action.

7. Mr. Gogoi, learned Standing Counsel, Health Department has submitted that since the respondent no. 7 could not carry out the obligations under the agreement dated 10.09.2020 due to the operation of an interim order, there would be no consequential adverse action.

8. In view of such submissions from the end of the respondent no. 7, it appears that the tender process initiated by the NIT [e-Tender] dated 23.06.2020 for Outsourcing of Dietary Services for the purpose of entering into a Rate Contract for 2 [two] years has become, in essence, infructuous. The writ petition which is preferred challenging the award of the contract in favour of the respondent no. 7 will not have any cause of action for the petitioner to pursue since with the expiry of 2 [two] years of the period of contract, as per the Deed of Agreement dated 10.09.2020, the specific performance of the same is

unlikely and the issue has become only academic.

9. Having considered the above fact situation obtaining in the case, the Court is of the considered view that there appears to be no live issue to continue with the writ petition and the same is accordingly closed. The interim order stands accordingly merged with this order. The respondent authorities in the Health Department will be at liberty to initiate a fresh tender process for Outsourcing of Dietary Services for patients at the AMCH, Dibrugarh, if so advised. It is for the respondent authorities in the Health Department to consider about continuation of the existing management till the conclusion of the fresh tender process.

JUDGE

Comparing Assistant