

GAHC010128402023



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

Case No. : WP(C)/3466/2023

HIMANGSHU SARKAR
SON OF LATE HANGSHADHAR SARKAR,
RESIDENT OF WARD NO. 4, SANTIPUR
P.O. MANGALDOI, DISTRICT- DARRANG,
ASSAM, PIN- 784125.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF MUNICIPAL ADMINISTRATION ASSAM
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
DARRANG
DISTRICT- DARRANG
ASSAM.

4:THE MANGALDOI MUNICIPAL BOARD
MANGALDOI
REPRESENTED BY ITS CHAIRMAN

P.O.- MANGALDOI

DISTRICT- DARRANG
ASSAM.

5:THE EXECUTIVE OFFICER OF MANGALDOI MUNICIPAL BOARD

MANGALDOI
P.O.- MANGALDOI

DISTRICT- DARRANG
(ASSAM)

PIN- 784125.

6:JAGADISH RAJBANGSHI
S/O- MANMOHAN RAJBANGSHI

RESIDENT OF GERIMARI

P.O.- MANGALDOI

DISTRICT- DARRANG
ASSAM

PIN- 784125

For the Petitioner (s) : Mr. B. Rahman, Advocate.

For the Respondent (s) :Mr. M. Chetia, Advocate,
Mr. H.Gupta, Advocate.

Date of hearing & Judgment : 28.11.2023

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner challenging the Resolution No. 1 dated 27.3.2023 and the settlement order dated 31.3.2023 issued by the Chairperson of Mangaldoi Municipal Board settling the Mangaldoi Fish Market with the Respondent No. 6 for the period of

2023-24 and direct the Mangaldoi Municipal Board to make the settlement of Mangaldoi Fish Market for the period of 2023-24 with the valid highest bidder/the Petitioner forthwith.

2. The facts involved in the instant case as could be discerned from the materials on record reveals that the Tender Notice was issued by the Chairperson of Mangaldoi Municipal Board, Darrang, Mangaldoi for the purpose of settlement of Hat/Bazar, Bus Parking, River Mahal etc under the Mangaldoi Municipal Board for the period 2023-24 subject to fulfillment of the terms and conditions of the Tender Notice. It reveals further from the Tender Notice, more particularly, the Clause 7 of the Tender Notice that the tenderers were required to enclose various certificates as stipulated therein.

3. From a perusal of the comparative statement enclosed to the writ petition as Annexure-E, it reveals that the Petitioner herein had submitted the tender of an amount of Rs.15,84,000/- whereas the Respondent No.6 had submitted the tender of Rs. 9,04,444/-. The second highest bidder was one Joyram Bharali who had quoted Rs.14,45,301/-. However, the Respondent Authorities have settled the tender with the Respondent No. 6 who had quoted Rs. 9,04,444/-. It further transpires from the minutes of the meeting held on 27.3.2023 that the Petitioner's bid was rejected on the ground that he did not submit the GST document as well as the money receipt of Rs. 500/-, whereas the bid of the second highest bidder i.e. Sri Joyram Bharali was rejected on the ground that he had withdrawn the said bid. Therefore, the 3rd highest bidder i.e. the Respondent No.6 was

awarded the contract. Being aggrieved by the said Resolution adopted in the minutes of the meeting dated 27.3.2023 and the subsequent Communication dated 31.3.2023, whereby the settlement was made in favour of the Respondent No. 6, the Petitioner have approached this Court by filing the instant writ petition seeking the reliefs as afore stated.

4. This Court have perused the tender document, wherein at Clause 7(kha), it was stated that the GST Clearance Certificate as well as the Income Tax Clearance Certificate are required to be submitted alongwith the Tender document. Admittedly the said GST Clearance Certificate was not submitted by the Petitioner alongwith his tender document.

5. The learned counsel appearing on behalf of the Petitioner submitted that the submission of the said document is not an essential condition of the tender and as such the Respondent Authorities ought to have taken into account that the Petitioner had quoted a higher price than what was quoted by the Respondent No. 6 and accordingly the tender ought to have been awarded to the Petitioner.

6. This Court have taken note of the judgment of the Supreme Court in the case of **Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd.** reported in **(2016) 16 SCC 818**, wherein the Supreme Court at paragraph No.15 had observed that owner or the employer of the project, having authored the tender document is the best person to understand and appreciate its requirement and interpret its documents. It was further observed that the constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is a

mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. Further to that, the Supreme Court also observed that though it is possible that the owner or the employer of the project may give an interpretation to the tender document that is not acceptable to the constitutional court but that by itself is not a reason for interfering with the interpretation so given. The said proposition was also again reiterated by the Supreme Court in the case of **M/S Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. M/S New J.K. Roadways, Fleet Owners and Transport Contractors and Ors.** reported in (2021) 16 SCC 808, wherein also it was observed that the authority that authors the tender document is the best person to understand and appreciate the requirements and as such it should not be second-guessed by the Court in a judicial review proceedings.

7. Taking into account the above propositions of law settled by the Supreme Court and also further taking note of that as per Clause 7(kha), it was a requirement that the GST Clearance Certificate was required to be submitted which the Petitioner did not submit, this Court therefore finds no reason to interfere with the decision taken in the minutes of the meeting dated 27.3.2023 to settle the tender in favour of the Respondent No. 6 as well as the settlement order dated 31.3.2023 issued by the Chairperson, Mangaldoi Municipal Board thereby issuing the settlement order in favour of the Respondent No. 6.

8. In that view of the matter, this Court finds no merit in the instant writ

petition for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant