

GAHC010143572023



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

Case No. : WP(C)/3829/2023

GOPESH TALUKDAR
S/O- AKHIL TALUKDAR, R/O- WARD NO.4, TIHU, P.S. NALBARI, DIST.-
NALBARI, ASSAM, PIN- 781371

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT
OF HOME, DISPUR, GUWAHATI- 781006

2:THE INSPECTOR GENERAL OF PRISONS
ASSAM
KHANAPARA
GUWAHATI-22
P.O. KHANAPARA
P.S. DISPUR
DIST.- KAMRUP (M)
ASSAM
PIN- 781022

3:THE DEPUTY COMMISSIONER
NALBARI
P.O. AND P.S. NALBARI
DIST.- NALBARI
ASSAM
PIN- 781337

4:THE SUPERINTENDENT OF DISTRICT JAIL
NALBARI P.O. AND P.S. NALBARI
DIST.- NALBARI
ASSAM
PIN- 78133

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 30.06.2023

Heard Mr. A.A.R. Karim, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Additional Senior Govt. Advocate appearing for the respondents.

2. The invitation to bid dated 08.06.2023, issued by the Superintendent of District Jail, Nalbari (respondent no.4) vide tender DJN/2023/1099 in respect of "tender for supply of dietary and non-dietary items for the financial year 2023-24" is assailed in the present writ petition filed under Article 226 of the Constitution of India essentially on two grounds, i.e. that instead of 21 days for submitting tender as contained in Schedule 1(a) of the Assam Public Procurement Act, 2017 (for short "2017 Act") was not provided because the e-tender notice was issued on 09.06.2023 with last date and time of online submission of bid was on 20.06.2023 up to 1.00 PM. The other ground on which the tender is assailed is that wide publicity was not given.

3. At the outset, the learned Additional Senior Govt. Advocate has raised the issue of maintainability on the ground of delay. It is submitted that the last date of submission of tender had already expired on 20.06.2023, but

this writ petition was filed on 27.06.2023 and therefore, was not maintainable because the delay has vitiated the challenge. It is also submitted that the representation submitted by the petitioner for granting extension of time to submit his tender was also filed on 23.06.2023, beyond the tender opening date. Henceforth, it is submitted that the present challenge to the tender should not be interfered with.

4. The learned counsel for the petitioner has referred to the copy of Schedule 1 (a) of the 2017 Act and has submitted that the said schedule has been notified by the Finance Department in its website, which was updated on 2nd October, 2021, whereby referring to section 9(1) of the 2017 Act and Rule 10(1) of the Assam Public Procurement Rules, 2020 (for short "2020 Rules"), it is submitted that time for submission of bid was 21 clear days from the date of first publication of notice of inviting bids.

5. Considered the submissions made by the learned counsel for the petitioner as well the learned Additional Senior Govt. Advocate.

6. It appears from the provision of section 9 of the 2017 Act that time frame for completion of various stages of process of tendering can be prescribed and under Rule 21(6) of the 2020 Rules, the time frame for submission of bids and minimum modes of publication is required to be notified by Finance Department and the learned counsel for the petitioner has been able to demonstrate that it is from the website of the Finance Department that the 21 days time for submission of bids was notified under Schedule 1(a) of the 2017 Act (Annexure-4 to the writ petition).

7. It is also observed from the provision of Rule 24(A)(iii) of the 2020

Rules that the date for opening of bids shall be fixed after at least 21 clear day counted from the date of publication of the latest advertisement inviting bids. As the tender process was through e-tender portal, the lack of publicity may not be a good ground to avail the tender process in this case.

8. Under such circumstances, the Court finds that the challenge to the tender process would be maintainable despite the petitioner approaching this Court on 27.06.2023.

9. Accordingly, in view of the nature of items required in the bidding process, which is dietary items, the Court is of the considered opinion that instead of keeping the matter pending and scuttle the tender process, it would be appropriate to issue a direction to the Superintendent of District Jail, Nalbari to re-open the e-bidding process for a further period of 4 (four) days from the date of receipt of certified copy of the order so as to enable any bidder who had not participated in the bid to submit their bid through the e-tender portal. If the process of re-opening the tender portal takes some time, the Court is inclined to provide that the fresh bidding process shall be kept open for 4 (four) clear days from the date of opening of the portal.

10. Accordingly, the petitioner shall submit a certified copy of this order within 3 (three) days from today. On receipt of the copy of this order, the respondent no.4 shall do the needful to open the e-tender portal for a further period of clear 4 (four) days and accept submission of tender by any bidder who wishes to do so.

11. The respondent no.4 is further permitted to suitably alter the other timelines for opening, evaluation and completion of the bidding process.

12. In view of the nature of order passed today, issuance of notice on the respondents is dispensed with.

13. Accordingly, this writ petition stands disposed of.

14. As the writ petition has been allowed at the motion stage, the respondents are permitted to apply for modification of the order, if so advised.

JUDGE

Comparing Assistant