

GAHC010161872023



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

Case No. : WP(C)/4138/2023

M/S BRAHMAPUTRA ASSOCIATES AND ANR.
HAVING ITS REGISTERED OFFICE AT LOKHRA, BYE LANE NO. 2,
GUWAHATI-781034, REPRESENTED BY ITS ASSISTANT MANAGER, RANJIT
KUMAR DAS

2: RANJIT KUMAR DAS
S/O S.K. DAS
ASSISTANT MANAGER OF M/S BRAHMAPUTRA ASSOCIATES
R/O SILPUKHURI
GUWAHATI-3
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR/NODAL OFFICER
FISHERY
ASSAM
GUWAHATI

4:THE SECRETARY TO THE FISHERY DEPARTMENT
D BLOCK
JANATA BHAWAN
DISPUR
GUWAHATI-6

5:THE DEPUTY COMMISSIONER -CUM- CHAIRMAN
DISTRICT LEVEL COMMITTEE
DARRANG
MANGALDOI

6:THE DISTRICT FISHERIES DEVELOPMENT OFFICER (DFDO)
DARRANG
MANGALDOI

7:THE SENIOR FINANCIAL ADVISOR (SR. FA) / FINANCIAL ADVISOR
DIRECTORATE (FISHERIES)
ASSA

Advocate for the Petitioners : Mr. M. Z. Ahmed, Advocate
: Mr. A. M. Dutta, Advocate
: Ms. B. Dutta, Advocate

Advocate for the Respondents : Mr. S. Baruah, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 25-07-2023

1. The instant writ petition has been filed challenging the Notice Inviting Quotation dated 10.07.2023 and also for a direction upon the Respondent Authorities to dispose of the representation dated 21.07.2023 and for directing an enquiry through an Independent Agency for violation of the extant law.

2. Taking into account the facts involved, this Court takes up the instant writ petition for disposal at the motion stage itself.

3. The facts involved in the instant case is that on 10.07.2023, a Short Notice Inviting Quotation was published thereby inviting offers from registered firm/supplier to supply the materials mentioned in the said Quotation under the

Scheme inputs for Fish Farming in New Pond Construction and inputs for Integrated Fish Farming under Pradhan Mantri Matsya Sampada Yojana (PMMSY) for the year 2022-23 along with money deposit (EMD) in the form of Demand draft/Term deposit/FDR/Call deposit etc. from any nationalized bank in favour of the District Fishery Development Officer, Darrang, Mangaldai on estimated amount @1% in the case of SC/ST/OBC/MOBC and @2% in the case of General Category supplier. It was mentioned in the said Short Notice Inviting Quotation that the tender would be received up to 1:30 PM on 24.07.2023 and would be opened at 2 PM on the same day at the Office of the District Fishery Development Officer, Darrang, Mangaldai in presence of tenderers or their authorized representatives. Further to that, in the said Short Notice Inviting Quotation, it was mentioned that the detail terms and conditions of the tenders are available in the Office of the District Fishery Development Officer, Darrang, Mangaldai which may be seen during the office hours.

4. It is relevant to take note of that there were various items, the supply for which the said Short Notice Inviting Quotation was published. As regards the items at Serial No.1, 5 and 6, the estimated value were Rs.6,80,000/-, Rs.28,000/- and 30,000/- respectively. However, as regards the items at Serial No.4 which is formulated fish feed (4mm pelleted with 26-28% CP floating 50% and sinking 50%) of a quantity of 49,565.22 KG of an estimated value of Rs.22,80,000/-. It further appears that there was a corrigendum issued which was published in the Assamese News Daily on 21.07.2023 wherein it has been mentioned that the last date for submission of the tender was fixed on 25.07.2023 till 1:30 PM and the tender box would be opened on the same day at 2 PM in the conference hall in the Office of the Deputy Commissioner,

Darrang as per the direction of the Chairman of the Tender Committee.

5. It reveals that on 21.07.2023, a representation was submitted by the various persons including the Assistant Manager of the Petitioner firm alleging various anomalies/errors as regards the procurement so made on the basis of the Short Notice Inviting Quotation on 10.07.2023. The Petitioners herein have approached this Court by filing the instant writ petition today i.e. on 25.07.2023 challenging the said Short Notice Inviting Quotation in respect to the item at Serial No.4 the estimated value of which is Rs.22,80,000/-. It is the case of the Petitioners herein that there is an Office Memorandum of the Finance Department, Government of Assam wherein it stipulates that all Administrative Departments of Government of Assam and its Subordinate Directorates/Offices/Agencies etc. (including institutions receiving Grant-in-Aids from Government of Assam) shall adopt e-procurement (<https://assamtenders.gov.in>) for procurement of all goods, services and works for all tender of values of Rs.20 Lakhs and above. However, in respect to certain categories, the said mandate have been relaxed. It is the case of the Petitioners that taking into account that the item at Serial No.4 has the estimated value of Rs.22,80,000/-, the said tender process so initiated on the basis of offline mode was contrary to the Office Memorandum of the Finance Department, Government of Assam and as such, the said tender process in respect to Serial No.4 should not be allowed to be continued.

6. Mr. P. Nayak, the learned Standing counsel appearing on behalf of the Finance Department of the Government of Assam submitted that though the Finance Department had issued the said Office Memorandum on 10.06.2023 but in respect to emergency procurement and urgent works, there is an

exemption in respect to procurement of goods, services and works for all tenders of value of Rs.20 Lakhs and above. He however submitted that this exemption would not however work in respect to procurement above Rs.50 Lakhs as could be seen in Serial No.(iii) of the said Office Memorandum wherein it is mandatory for making procurement only by way of e-procurement mode. The learned counsel for the Finance Department further drawing the attention of this Court to the Short Notice Inviting Quotation submitted that these types of Short Notice Inviting Quotation are normally issued when there is an urgent or emergency requirement of certain goods.

7. Mr. S. Baruah, the learned counsel appearing on behalf of the Fishery Department of the Government of Assam had submitted that from a perusal of the writ petition it is apparent that on 16.07.2023, the Petitioners had the due knowledge about the said Short Notice Inviting Quotation. The Petitioners further knew that today i.e. on 25.07.2023 is the last date for submission of the tender and by 2 PM, the said tender would be opened and now the Petitioners has invoked the jurisdiction of this Court by filing the instant writ petition and as such, on that ground itself, it disentitles the Petitioners to the relief so sought for. The learned counsel further submitted that the Petitioners have not shown any prejudice that had been caused to him on account of the said procurement in respect to the goods at Serial No.4 which has been done through offline mode inasmuch the Petitioners having known about the same on 16.07.2023 could have very well participated in the said tender process. He therefore submitted that the instant writ petition is not bona fide and accordingly should be dismissed with exemplary costs. The learned counsel for the Fishery Department further submitted that though a Co-ordinate Bench of this Court has passed an interim order on 13.07.2023 in WP(C) No.3977/2023

however the said interim order cannot be applied to the facts of the instant case inasmuch as the Petitioners have approached this Court at the eleventh hour.

8. I have heard the learned counsels for the parties and has perused the materials on record. It appears from a perusal of the writ petition itself that the Petitioners knew about the Short Notice Inviting Quotation on 16.07.2023. They further knew that on 21.07.2023, there was a corrigendum issued stating inter alia that the tenders would be accepted till 1:30 PM of 25.07.2023 and at 2 PM of the said date, the tenders would be obtained. However, it is seen that the Petitioners have filed the instant writ petition only today i.e. on 25.07.2023 and as such in the opinion of this Court, it disentitles the Petitioners to the relief so sought for.

9. Be that as it may, it is further seen from the Office Memorandum dated 09.06.2023 which was signed on 10.06.2023 that for procurement of all goods, services and works for all tenders of values of Rs.20 Lakhs and above, the same should be adopted through e-procurement mode. It is further seen that there is an exemption whereby all emergency procurement and urgent works as defined in the Assam Public Procurement Rules, 2020 are exempted from the purview of the said Amendment.

10. It is relevant to take note of that Rule 2(i) of emergency procurement to mean procurement of goods, services and works that needs to be taken up in response to recent or imminent, natural or man made disaster and calamities to restore public facilities or services which are crucial for reinstating normal public life. Rule 2(s) defines urgent works as distinct from emergency works to mean works which require immediate commencement for completion within a

very short compressed time schedule which needs to be taken up on priority basis in public interest to ensure the safety and security of life or prevention of loss of public assets. Taking into account that the items at Serial No.4 which is a fish feed and the issuance of a Short Notice Inviting Quotation and the manner in which it was done for procurement of the same on priority basis, this Court is of the opinion that the same would come within the ambit of exception of emergency procurement as defined in the Assam Public Procurement Rules, 2020. The submission of the learned counsel for the Finance Department also supports the said view.

11. Another very relevant aspect of the matter which needs consideration is that from a perusal of the writ petition, it is nowhere disclosed as to how the Petitioners herein are prejudiced by the Short Notice Inviting Quotation inasmuch as the Petitioners very well knew on 16.07.2023 about the Short Notice Inviting Quotation and the last date was further extended to 25.07.2023. The filing of the writ petition at the eleventh hour does not inspire the confidence of this Court on the conduct of the Petitioners.

12. Before concluding, this Court also finds it relevant to observe that the order dated 13.07.2023 in WP(C) No.3977/2023 being only an interim order, the same would not be binding upon this Court when the writ petition is being taken up for final disposal.

13. Taking into account the above, this Court finds no merit in the writ petition for which the writ petition stands dismissed. No costs.

JUDGE

Comparing Assistant