

GAHC010167382023



**IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)**

WA 285/2023

Bikash Sarma

Address - S/O- Sri. Binod Dutta Sarma,

R/O- Vill- Barpara, P.O. Boko, P.S. Boko,

Dist.- Kamrup, Assam, Proprietor Of J.M.K. Enterprise,

..... Appellant

Versus

1) The Union of India and 4 Ors.

Represented by The Secretary, Ministry Of Human Resource Development, Department Of School Education And Literacy,
124(C) Wing, Shastri Bhawan, New Delhi- 110001

2) Mission Director, Rashtriya Madhyamik Shiksha Abhiyan, Assam

3) Deputy Commissioner, Darrang, Dist.- Darrang, Assam

4) Circle Officer Cum Convenor, School Management Development Committee, Adarsha Vidyalaya, Dalgaon.

5) The Principal, Adarsha Vidyalaya, Dalgaon, Vill- Ruhinikash, P.O. Dalgaon, Dist.- Darrang, Assam, Pin-
784116.

..... Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

For appellant(s) : Mr. K.N. Choudhury, Sr. Advocate
Assisted by Mr. R.M. Deka, Advocate.

For respondent(s) : Mr. U.K. Nair, Sr. Advocate Assisted by Mr. B. Kaushik,
Advocate,
Mr. B. Gogoi, Standing Counsel, RMSA,

Mr. J. Sarmah, for the Res No. 1.

Mr. R.K. Borah, Addl. Sr. Government Advocate, Assam.

Date of Judgment & Order : **04.08.2023**

JUDGMENT & ORDER (Oral)

(S.P. Khaund, J)

1. Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. R.M. Deka for the petitioner as well as Mr. U.K. Nair, learned Senior Counsel assisted Mr. B. Kaushik, for M.J. Enterprise (Caveator). Also heard Mr. B. Gogoi, learned Standing Counsel for the RMSA; Mr. J. Sarmah, learned counsel for the Res No. 1 and Mr. R.K. Borah, Addl. Sr. Government Advocate, Assam.

2. This intra Court appeal is directed against the judgment and order dated 20.07.2023 in connection with WP(C) 8353/2022.

3. Sri Bikash Sarma (hereinafter referred to as the appellant) is the proprietor of J.M.K. Enterprise. The Principal, of Adarsha Vidyalaya, Dalgaon, arrayed as respondent no. 5 in this case had invited quotations from registered manufacturers/dealers for supply of furniture for Adarsha Vidyalaya, Dalgaon (hereinafter referred to as school) through short notice on 15.07.2022 (NIT for short) with the last date of application on 30.07.2022. The appellant collected the bid documents and after going through the terms and conditions of the NIT, he participated in the tender process and submitted his bid with all the required documents as prescribed in the NIT along with three other bidders.

4. On 29.09.2022, the appellant was served with a notice issued by the Principal of the School for cancellation of the tender dated 15.07.2022. The tender was cancelled on the

ground of receiving insufficient qualified quotations for comparison of rates as per the instruction of Deputy Commissioner, Darrang. After cancellation of the earlier NIT, the Principal of the school floated a fresh NIT dated 20.10.2022 for supply of furniture in the school, as per the list of items marked as Annexure-I and under the terms and conditions stated in Annexure-II. The date fixed for opening the quotations was fixed on 03.11.2022 at 2.00 P.M. in presence of authorised representatives of the bidders. The appellant had participated in the fresh tender process initiated by the Principal of the School by quoting an amount of Rs. 25,11,312.00. The bid submitted by the appellant was once again evaluated as L1 bid.

5. After evaluation of the bids, the principal of the School vide letter dated 14.12.2022, instructed the appellant and the M.J. Enterprise, Guwahati to provide samples of furniture of all items as per specifications on or before 19.12.2022. It is submitted on behalf of the appellant that the letter dated 14.12.2022 was received on his whatsapp number on 15.12.2022. In response to the letter, the appellant vide letter dated 19.12.2022 informed the Principal as well as Deputy Commissioner, Darrang that the time fixed for submission of samples of furniture was very short (only three days) as the samples were not called for at the time of submission of tender.

6. Appellant's samples were to be approved, subject to the condition that if his samples were found to be inadequate as per the required specifications then the L2 may be invited for making the supply. Apprehending that the respondent authorities may award work order to L2 bidder i.e. M.J. Enterprise, the appellant moved the writ petition being W.P.(C) 8353 of 2022 with prayer seeking a direction upon the respondent authorities to issue work order in favour of the appellant. The other respondents viz the Union of India, Mission Director,

Rashtriya Madhyamik Shiksha Abhiyan, Assam, Deputy Commissioner, Darrang, District-Darrang, The Circle Officer-cum-Convenor, School Management Development Committee, Adarsha Vidyalaya, Dalgaon were arrayed as respondent nos. 1, 2, 3 and 4, in this writ petition. However the L2 bidder i.e. M.J. Enterprise was not impleaded as a party respondent in the writ petition.

7. Vide order dated 22.12.2022 in W.P. (C) No. 8353 of 2022, an interim order was passed directing the Principal of the school, respondent no. 5, not to issue work order till the Circle Officer cum Convenor of SMDC of the school does not disclose the status of the bidders or till returnable date, whichever is earlier. It was also provided that if the status of the bidders had been declared, it would be open to the respondents to proceed with the procurements in terms of the NIT dated 20.12.2022. Vide order dated 31.03.2023, the appellant was afforded another opportunity to place the samples of furniture within a period of 10(ten) days for inspection and assessment. In compliance of the order dated 31.03.2023, the inspecting team of the respondents carried out a fresh inspection/assessment of the samples of furniture presented by the appellant and M.J. Enterprises i.e., the L2 bidder. The samples placed by the appellant were approved and work order was issued in favour of the appellant on 19.04.2022. It is stated that in terms of the work order dated 19.04.2023, the appellant had already supplied bulk of the furniture to the school. The appellant claims to have received information regarding WP(C) No. 2189/2023 moved by the L2 bidder impleading the appellant as respondent no. 6, wherein, the work order dated 19.04.2023 issued in favour of the appellant had been challenged. WP(C) 8353/2022 and WP(C) 2189/2023 were both taken up together on 03.05.2023 and the supply of remaining furniture to be made by the appellant was directed to be stopped.

8. The W.P.(C) No. 8353/2022 was duly contested by the present respondent no. 5 and the present appellant also filed affidavit-in-opposition in W.P.(C) No. 2183/2023. Both the writ petitions being W.P.(C) No. 8353/2022 and W.P.(C) 2189/2023 were decided by the common judgment dated 20.07.2023. The learned Single Judge, dismissed the WP(C) No. 8353/2022 and partly allowed the WP(C) No. 2189/2023, setting aside the work order no. AB/Dalgaon/procurement/2023/291 dated 19.04.2023 issued by the respondent no. 5. The interim order dated 03.05.2023 passed in the WP(C) No. 2189/2023 was made absolute by restraining the respondent no. 5/authority to accept any supply from the appellant, namely, J.M.K. Enterprises, proprietorial concern pursuant to the aforementioned work order issued by the respondent no. 5 and it was provided that the Principal of the school (respondent no. 5) may either call for a fresh tender and/or call for competitive rates from the bidders who had participated in the bidding process pursuant to the NIT dated 15.07.2022 and/or by adopting any other transparent process. A cost of Rs. 25,000/- was also imposed upon the appellant for suppressing the inspection report dated 19.12.2022 before the Court while moving the W.P.(C) 8353/2022.

9. It is contended that the respondents have not taken any action of issuing a fresh tender in compliance to the judgment and order dated 20.07.2023. The appellant on the basis of the order dated 19.04.2023 had already arranged for supply of remaining lot of furniture and in fact the same are ready to be supplied. The appellant has vehemently denied that he had intentionally withheld, the inspection report dated 19.12.2022 while moving the W.P.(C) No. 8353/2022. He has not given his signature on the inspection report. He had sent one of his employees Sri Iqbal Hussain to furnish the samples of the furniture in terms of the letter dated 14.12.2022. Sri Iqbal Hussain, informed the appellant that he had affixed his signature

on an unprepared document, which was later filled up in a clandestine manner, after the signature of Iqbal Hussain was procured, and the signature of the L2 bidder was also taken on this document. Evidently, the physical Inspection team asked Iqbal Hussain to affix his signature on an unprepared report to mark his presence during the inspection even before preparing the inspection report dated 19.12.2022. It is submitted by the appellant that during the pendency of the writ petition, his representative Sri Iqbal Hussain forgot to inform him about the facts relating to his signature on the inspection report dated 19.12.2022.

10. On the contrary, it is alleged by the respondent that on 19.12.2022, the appellant as well as the M.J. Enterprise along with the members of the inspection team had jointly affixed their signatures on the "*physical inspection team report on furniture samples for Adarsha Vidyalaya, Dalgaon, provided by M.J. Enterprise and J.M.K. Enterprise*". The appellant was privy to the fact that M.J. Enterprise was the other bidder in the tendering process but the appellant intentionally did not array M.J. Enterprise as a respondent while filing WP(C) No. 8353/2022.

11. It is also averred that the appellant concealed the fact regarding the inspection carried out on 19.12.2022 wherein, the samples furnished by M.J. Enterprises were approved. However, on a projection that insufficient time was granted to him to furnish the samples, vide order dated 31.03.2023, the appellant was granted one more opportunity to place the samples of the supplies proposed to be made within a period of 10(ten) days and further a fresh inspection, assessment of the samples was directed to be taken up before issuance of work order. Nonetheless, the order dated 30.01.2023, also contained a safeguard that such a decision should be taken independently and the outcome be informed to the Court by the next date fixed. The M.J. Enterprise was taken aback, when it received the letter dated

11.04.2023 from the Principal of Adarsha Vidyalaya, respondent no. 5 informing him about the proposed inspection/assessment of furniture on 12.04.2023 at 11.00 A.M. The proprietor of M.J. Enterprise was taken by surprise as he was not informed about the order dated 31.03.2023 and he sought information, as to why fresh inspection was necessary regarding the samples which had already been inspected. Without any information provided to the M.J. Enterprises, the respondent no. 5 had issued the work order dated 19.04.2023 in favour of the appellant without obtaining the leave of the Court.

12. Both the appellant and the M.J. Enterprise are competitive bidders and the M.J. Enterprise assailed the work order dated 19.04.2023 by filing WP(C) No. 2189/2023 and thus, M.J. Enterprise was a necessary party in the WP(C) No. 8353/2022. On the other hand, the judgment and order dated 20.07.2023 in connection with WP(C) 8353/2022 will not act as an embargo on the entitlement of M.J. Enterprise because it has been clearly mentioned in the order that "it would be open to the respondent no. 5 to either call for a fresh tender and/or call for competitive rates from the bidders who had participated in the bidding process pursuant to NIT dated 15.07.2022 and/or by adopting any other transparent process for procurement and after carrying out inspection of the sample furniture to be supplied." It is apparent that the appellant has not made M.J. Enterprise a party in WP(C) 8353/2022, despite the fact that the lis lies predominantly between the appellant and the M.J. Enterprise. The appellant's submission that he was not aware of the inspection report on 19.12.2022 is not tenable and hence evidently the writ petition filed by the appellant suffered from the vice of concealment of material facts as well as non-joinder of necessary party and hence he has to be non suited on this count alone.

13. In view of the foregoing discussions, we record our concurrence to the decision of the

learned Single Bench in WP(C) No. 8353/2022 vide order dated 20.07.2023. This appeal is devoid of merits and is hereby dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant