

GAHC010174702021



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

**Case No. : WP(C)/5610/2021**

M/S S K ENTERPRISE AND ANR  
PROPRIETOR- SANTOSH KUMAR AGARWAL, BARPETA ROAD, P.O. AND  
P.S. BARPETA ROAD, WARD NO.2, DIST.- BARPETA ASSAM, PIN- 781301,  
GSTIN- 18AMSPA3983G3ZN

2: SANTOSH KUMAR AGARWAL  
S/O- BABULAL AGARWAL  
R/O- BARPETA ROAD  
P.O. AND P.S. BARPETA ROAD  
WARD NO. 2  
DIST.- BARPETA  
ASSAM  
PIN- 78130

VERSUS

FOOD CORPORATION OF INDIA AND 2 ORS  
REGIONAL OFFICE, ASSAM REGION, PALTAN BAZAR, GHY, P.O. AND P.S.  
PALTAN BAZAR, DIST.- KAMRUP, ASSAM, PIN- 781008

2:THE GENERAL MANAGER  
ASSAM REGION  
FOOD CORPORATION OF INDIA  
PALTAN BAZAR  
GHY- 781008

3:ASSTT. GENERAL MANAGER  
ASSAM REGION  
FOOD CORPORATION OF INDIA  
PALTAN BAZAR  
GHY- 78100

**Advocate for the Petitioner : MR. M U MAHMUD**

**Advocate for the Respondent : SC, F C I**

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**ORDER**

**Date : 26.05.2023**

None appears on behalf of the petitioners on call. Mr. P.K. Roy, the learned Senior Counsel assisted by Mr. S.K. Chakraborty, the learned counsel appears for the respondent Nos. 1, 2 & 3.

2. The instant writ petition has been filed challenging the rejection of the bid of the petitioners against Tender No. S & C/2171/Assam/AP/2021. To the said writ petition, the Model Tender Form has been enclosed.

3. Clause 6 of the General Information to Tenderers stipulates that each tender must be accompanied by an Earnest Money @ 2% value of the contract which must be submitted electronically through NEFT/RTGS/other electronic means by tenderers for which concerned FCI/RO would provide its Bank Account No. and concerned Branch of the bank where the account is held. It was further stipulated in Clause No. 6 that in case of NEFT/RTGS/other electronic means the tenderer has to indicate the transaction no. (UTR no.) of such payments appropriately in the bid.

4. It is further seen that in terms with Clause 14 of the General Information to Tenderers, certain exemptions have been granted to the Micro and Small Enterprises. In terms with Clause 14 (II), the Micro and Small Enterprises (MSE) registered with the agencies for the items/tendered will be exempted from payment of Earnest Money Deposit. In Sub-Clause (III) of Clause 14, it has been further mentioned that the MSEs who are interested in availing themselves of these benefits and preferential treatment, will enclose with their offer, the proof of their being registered for goods produced and services rendered with any of the agencies mentioned in the notification of the

Ministry of MSME indicated therein with the bid. The agencies have been mentioned to be the (i) District Industries Center, (ii) Khadi and Village Industries Commission, (iii) Khadi and Village Industries Board, (iv) Coir Board, (v) National Small Industries Corporation, (vi) Directorate of Handicraft and Handloom and (vii) any other body specified by the Ministry of MSME.

5. In Sub-Clause (IV) of Clause 14, the MSEs must indicate the date of their MSE registration which should be valid as on the last date of submission of their tender. MSEs further in order to get exemption and benefits should upload attested/self certified copy of valid registration certificate, giving details such as stores/services etc, failing which they run the risk of their bid being passed over as ineligible for the benefits applicable to the MSEs.

6. In Sub-Clause (V) of Clause 14, the benefits as stated above to MSE, shall be available for goods/services produced and provided by the MSMEs for which they are registered. In Sub Clause (VI) of Clause 14, it has been further stipulated that if the MSE do not fulfill the criteria laid down in Sub Clauses (III), (IV) and (V), such offers would not be entitled for the benefits under MSE Notification dated 23/3/12.

7. It appears from the record that the Technical Bid Evaluation Committee consisting of the AGM (Cont), AGM (F/A) & AGM (Movt) examined the tenders for appointment of the RTC Ex- FCI Siding PEG (Sabhog) to FSD Tihu. Amongst the nine tenderers, four tenders were rejected as being technically disqualified including the petitioner. It appears from the Technical Bid Evaluation Committee's report (enclosed as Annexure-D to the affidavit-in-opposition filed by the respondents) that the petitioner did not submit the EMD but claimed exemption from furnishing the EMD. However, the petitioner submitted an MSME (Udyam Registration Certificate) pertaining to Division 77 i.e rental and leasing activities which is not relatable to the subject tender of Road Transport Contract. It is under such circumstances, the Technical Evaluation Committee rejected the bid of the petitioner under Clause 14(II) read with Clause 14

(V) and Clause 14(VI) of the Model Tender Form (MTF).

8 Mr. P.K. Roy, the learned Senior Counsel further submitted that the said tender was for a period of two years from 20/12/2021 to 19/12/2023. The L1 bidder was allotted the contract and another 6/7 months is only left. Mr. P.K.Roy, the learned Senior Counsel further submitted that as the Respondent Authorities have duly taken action in terms with the conditions of the Model Tender Form and as the petitioner herein failed to submit the required certificate for claiming exemptions as a MSEs, it was imperative for the petitioner therefore to submit the EMD.

9. Upon hearing the learned counsel for the respondents and taking note that it is no longer res integra that a Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something is gross or palpably wrong is pointed out, this Court is not inclined to interfere with the allotment of the contract to the L1 Bidder. This Court is further of the opinion that to set aside the entire tender process at the stage when the contract is nearing completion would not be in public interest. This Court also cannot be unmindful of the fact that initiating a fresh tender process at this stage, that too, when only six months is left may consume a lot of time and also loss to the public exchequer. It is under such circumstances, this Court is not inclined to interfere with the decision of the respondents in rejecting the tender of the petitioner. Accordingly, the petition stands dismissed.

**JUDGE**

**Comparing Assistant**